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P R E F A C E.

Quidquid delirant reges, plectuntur Achivi—which means that the enactment of each and every new law throws an additional burden on the revenue and judicial services. It is the object of this Manual to oil the wheels of the official machine, and thereby to lighten such burden. At the same time the compiler hopes and desires, that the use of this Manual will improve the administration by the substitution of certainty for uncertainty, of definite data for haphazard decision, by rendering smoother the thorny paths of law and practice, and generally by posting up the sign-boards of applicable case-law, so that “he who runs may read.”

The compiler’s “Manual of Indian Criminal Law” had to compete with many other publications *in eâdem vel simili materiâ*. Still the first edition was sold out within a year. Many Magistrates and Judges congratulated the compiler on the arrangement and completeness of the annotations; two Secretaries to Government endorsed the book with their *imprimatur* of approval, and the Civil Service Commissioners in London have adopted it for the use of selected candidates.

In bringing out a Manual of Revenue and Collectorate Law, the compiler treads on virgin soil, and has no other publications to compete with. Much of the subject-matter is intricate and little known. It is notorious that the Bar (as a body) and the

Subordinate Judicial Service have but a very superficial and perfunctory knowledge of revenue collectorate law ; and even Civilians of much revenue experience are constantly regretting the want of a practical and intelligently annotated Manual. The compiler therefore hopes that this Manual will supply a real want. It is most essential that Magistrates should have a fair knowledge of case-law and it is even more essential that Civil Courts should have a thorough grasp of revenue-law. Government annually loses many lakhs of rupees owing, in some instances, to the prosecution of untenable claims, or the refusal to admit such as are valid, but more often to the abandonment of lawful rights and legal dues brought about by apathy, uncertainty, or insufficient knowledge of the law, and to false and exaggerated ideas regarding private, when opposed to public, rights. The compiler believes that the case-law has been intelligently dealt with, arranged, and explained ; it has not been flung at the reader in a shapeless, contradictory, and chaotic mass—*rudis indigestaque moles*. The Collector will find the law ready to his hand, whether he be deciding a registration appeal, revising a settlement, hearing khas mehal or Court of Wards rent-cases, conducting revenue or putni sales, deciding on the sufficiency of a stamp or the necessity for a stamp prosecution, laying down a boundary, settling alluvion and churs, acquiring land, and generally in the thousand and one instances in which he is called on to come to a decision as to the respective rights of Government, the public and private persons.

H. A. D. PHILLIPS,

*Offg. Joint Magistrate
of Bhagulpore.*

April 1884.

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MANUAL OF REVENUE AND COLLECTORATE LAW.

PART I. Alluvion, Diluvion, and Islands.

REGULATION XI OF 1825.

*A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.**

1. IN consequence of the frequent changes which take place in the channel of the principal rivers that intersect the Provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment and dereliction also sometimes occur along the sea-coast which borders the southern and southern limits of Bengal.

Declared to apply to the whole of the Lower Provinces except the Muzaffargarh Districts, Act No. XV of 1874.

The lands gained from the rivers or sea by the means above-mentioned are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above described.

The Court of Sadr Díwání Adálat, with a view to ascertain the legal provisions of the Muhammadan and Hindú laws on this subject, called for reports from their law-officers of each persuasion, and on consideration of the reports furnished by the law-officers in consequence, as well as of the decisions which have been passed by the Court of Sadr Díwání Adálat in cases brought before them in appeal which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Courts of judicature; to be in force, as soon as promulgated, throughout the whole of the Provinces subject to the Presidency of Fort William.

2. Whenever any clear and definite usage of shikast

Claims and disputes as to alluvial lands to be decided by usage when clearly recognized and established.

paiwast respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established, for determining the rights of the proprietors of

two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

The custom to be established under s. 2, Reg. XI of 1825, as to the disjunction and junction of alluvial land by the encroachment or recess of a river, must be a local custom. Canoongoe Papers are not sufficient to prove the existence of such custom.—2 Suth. P. C., 217.

The plaintiffs sued to obtain possession of land on the ground of the existence of a custom in the district, that where land, which had

from time to time the volume of water shifts, so that alternately one of those channels is deep, and the other is fordable, then the whole of such intermediate land belongs to the land-owner on the side of the channel which at any given time is fordable. *Held* (without deciding whether such a custom falls within s. 2), that no clear and definite usage had been established.

A fluctuating boundary between zillahs does not necessarily affect the rights of landed riparian proprietors.

An *ikrarnama* between two zemindars as to the mode of determining the boundaries of their estates in the event of changes in the channel of a river, cannot bind persons claiming under one with whom the perpetual settlement was subsequently made as to the lands in his possession, he being a stranger to that *ikrarnama*.—11 B. L. R., 265.

The mere fact of a river being the constant boundary between two districts cannot, in the absence of any special custom, affect the rights of riparian proprietors as created by Reg. XI. of 1825. A custom sometimes exists that the main channel of a river shall always remain the boundary between two zemindaris.—22 W. R., 427.

3. Where there may be no local usage of the nature

Where no usage established, claims how decided. referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

4. *First*.—When land may be gained by gradual acces-

Lands gained by gradual accession from recess of river or sea. sion, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a zemíndár or other superior landholder, or as a subordinate tenure, by any description of under-tenant whatever.

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property

Extent of interest in increment of person in possession.

permanent interest therein beyond that possessed by him estate or tenure to which the land may be annexed, shall not in any case be understood to exempt the of it from the payment to Government of any assess- for the public revenue to which it may be liable the provisions of Reg. II, 1819, or of any other lation in force.

Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a khudkást raiyat, holding a maurúsí istimrari tenure at a fixed rate of rent per bigha, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

All the incidents of the original tenure attach to the increment.—J. L. R., 7 Cal., 479.

The increment is to be assessed with reference to the terms and conditions under which the parent tenure is held.

A tenant-at-will is entitled to occupy an accretion to his holding so long as he retains possession of his original holding.—8 B. L. R., 73.

The question whether land is formed by gradual accretion depends on evidence.—9 B. L. R., 150.

The case of *Lopez v. Moddun Thakoor* was a case where the river first went forward, and then, after a certain number of years, came back again, and brought to the surface the ground which had been sunk. It was held that that went back to the old owner. In the present case it was held that the fact that the surface of the land had been changed, and that marks, such as houses, trees, and boundaries, had been obliterated, was not conclusive evidence to show gradual accretion. The defendant in the case owned a *chuckee*, at the bottom of which the Ganges originally flowed. By a sudden change a portion of the Ganges began to run above the *chuckee*, and between the *chuckee* and the disputed land. The land over which the stream ran belonged to the defendant. The moment the Ganges left the stream which it had formed—and it certainly does not appear to have remained there above a year or two—the moment that course became a *nulla*, dry in the dry season, it appears to their Lordships quite clear (and *Lopez v. Moddun Thakoor* is a direct authority) that that land which had been covered with water, when it ceased to be covered with water, became the property of the defendants. The consequence is, that the defendants were themselves the owners of the land to which the greater part of the new land accreted.—See S. D. A., 1859, p. 1353.

It was decided in the case of *Romanath Thakoor v. Chandernarain Chowdry* (Marsh. H. C. Rep., 136) that lands washed away and afterwards reformed on an old site, which could be clearly recognized, are not lands gained within the meaning of s. 4 of Reg. XI of 1825, that is, they do not become the property of the adjoining owner, but remain the property of the original owner. The same point arose again in the case of *Mussamat Imam Bandi v. Hargobind Ghose* (1 Moore's I. A., 403). In that case it was said :—“ The whole of the district adjoining the land in dispute, as well as that land itself, is flat, and very liable to be covered or washed away by the waters of the Ganges, which river frequently changes its channel. The land in dispute was inundated about the year 1787 ; it remained covered with water till about 1801, and then became partly dry, until in the year 1814, it was again inundated. After this period it once again reappeared above the surface of the water, and by the year 1820, it became very valuable land.” It was held as follows :—“ The question then is to whom did this land belong before the inunda-

tion? Whoever was the owner then remained the owner while it was covered with water and after it became dry."

In a subsequent case, however, *Kalimoni Dasi v. Rance Monmohini Dabi* (3 W. R., 51) it was held, that all gradual accessions from the recess of a river on the sea are an increment to the estate to which they are annexed, without regard to the site of the increment. The Court seems to have considered that the case above quoted did not apply where the property was to be considered as wholly lost and absorbed, and no part of the surface remained capable of identification; where there was a complete diluviation of the usable land, and nothing but a useless site left at the bottom of the river. However in the leading case of *Lopez v. Moddun Thakoor* (5 B. L. R., 521, P. C.) their Lordships of the Privy Council were unable to assent to any such distinction between surface and site. They remarked:—"The site is the property, and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained." It was laid down that where property is wholly submerged by a river, any land forming afterwards on the site will, when the ownership of that site is proved to exist in the former owner, remain in him, and the accretions will not belong to the adjacent proprietor.

Their Lordships quoted Hale's *De Jure Maris*, p. 15:—"If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so yet that there be reasonable marks to continue the notice of it, or though the marks be defaced, yet, if by situation and extent of quantity and boundary on the firm land the same can be known, or it be by art or industry regained, the subject doth not lose his property." Their Lordships went on to say:—"There is, however, another principle recognized in the English law (derived from the civil law), which is this,—that where there is an acquisition of land from the sea or a river by *gradual, slow and imperceptible means*, there, from the supposed necessity of the case and the difficulty of having to determine, year by year, to whom an inch, or a foot, or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land.—*The King v. Lord Yarborough* (3 B. & C., 91). And the converse of that rule was, in the year 1839, held by the English Courts to apply to the case of a similar wearing away of the banks of a navigable river, so that there the owner of the river gained from the land in the same way as the owner of the land had in the former case gained from the sea.—*In re The Hull and Selby Railway Company* (5 M. and W., 327). To what extent that rule would be carried in this country, if there were existing certain means of identifying the original bounds of the property, by landmarks, by maps, or by a mine under the sea, or other means of that kind, has never been judicially determined." "On the very words of the section itself, if the ownership of the submerged estate remained as it was (and there seems nothing to take it away), it is difficult to see why a deposit of alluvion directly upon it is not at least as much an accretion and annexation vertically to the site as it would be a accretion and annexation longitudinally to the river frontage of the adjoining property."

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, with-

When river by sudden change of course intersects estate.

out any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate, and join it to another estate, without destroying the identity and preventing the recognition of the land so removed.

In such cases the land, on being clearly recognized, shall remain the property of its original owner.

In a suit for alluvious lands, which had accumulated on the estate of the plaintiff, by the gradual recession of a river that formed the boundary, and was afterwards severed from the plaintiff's estate and left united to that of the defendant by the sudden return of the river to its former course, the Sadr Dīwānī Adālāt disallowed the claim of the plaintiff.—S. D. A., 1809, p. 274.

Third.—When a char or island may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of Government.

Chars thrown up in navigable river. But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

Property therein when channel fordable. Though an island, or land thrown up and surrounded by a river, may become vested in Government under the provisions of Reg. XI of 1825, it does not follow that, if the river which separates the island from the main land dries up after the island has been resumed by Government, the bed of the river becomes the property of Government in cases in which it is not gained as an accretion to the island by gradual accession within the meaning of clause 1.—2 Suth. P. C., 892.

Where a char formed in the middle of a river, and was settled with A, and by the recession of the river new land appeared, which was really a deposit on the ancient site of B's land, though adhering to the char, it was held to be B's land.

The first rule established by s. 4, Reg. XI of 1825, does not apparently contemplate land other than that commonly known as alluvion, *viz.* land gained by gradual and imperceptible accretion, the *incrementum latens* of the Civil Law. There is no express provision in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation reappears on the recession of the sea or river, and there is nothing to take away or destroy the original proprietor's right; such a case is to

be determined by the general principles of equity and justice under the 5th rule contained in s. 4.

A title founded on the original ownership and identification of land reappearing is to be confined *primâ facie* to the reformation on that site.—10 B. L. R., 406.

The Government is not entitled to take possession of land which has reformed on an old site of land belonging to another, although the reformation forms an island, and is surrounded by a channel which is not fordable.—11 B. L. R., 219.

When lands, submerged by a river, reform, and can be identified as having formed a part of a particular estate, they belong to the owner of that estate, whether his estate consists wholly of permanently settled lands, or whether it has been partly acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently settled lands.—14 B. L. R., 268.

The reformation of land in the bed of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate, nor is the land which has been removed from an estate by sudden avulsion reclaimable, unless the circumstances supply evidence of identity. A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the char, but there must be proof of the nucleus of accretion. The land gained will follow the title of the particular land forming the nucleus.

The cultivation of char lands, like that of waste or jungle lands, carries no *primâ facie* character of usurpation or wrong: and the claimant against a purchaser, *bonâ fide* and without notice, in possession, must strictly prove his title.—2 B. L. R., P. C., 4.

When a char or island is thrown up in a large navigable river, originally surrounded by deep unfordable water, but between which and the estate of the zemindâr a fordable channel has since been created, the criterion for deciding whether the Government has the right of disposing of that island, or whether the owner of the land to which it is most contiguous has that right, is to consider the state of circumstances at the time of the formation of the island,—that is, the time when it is thrown up, and not the state of things at any subsequent or fluctuating period, such as the subsequent silting up of the bed of the river between the island and the contiguous estate so as to form a fordable passage.—6 B. L. R., 255.

The words “fordable at any season of the year” refer to the year in which the formation of the island took place, and not to any future year.—*Ibid.*

“Fordable.” A riparian proprietor has no right to an island thrown up in a large navigable river, when the channel which intervenes between his land and the island is, under ordinary circumstances, and at the most favourable seasons, unfordable for 16 out of 24 hours.—6 B. L. R., 343.

Government has no right to land thrown up as an island in the bed of a navigable river, when such island is formed on the site of land which had been washed away.—6 B. L. R., 93, App.

Fourth.—In small and shallow rivers, the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals, any sand-bank or char that may be thrown up shall, as hitherto, belong to

Chars. &c., thrown up in small shallow rivers.

the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Fifth.—In all other cases, *viz.*, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or if not, by general principles of equity and justice.

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers, or to prevent Zila and City Magistrates or any other officers of Government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

ACT No. XXXI OF 1858.

*An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.**

WHEREAS, for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land; It is enacted as follows:—

1. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment, if it be so agreed on between the Revenue-authorities and the proprietor or proprietors, the

Addition of revenue assessed upon alluvial land to jama of original state.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

revenue assessed upon the alluvial land may be added to the jama of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former jama of the original estate.

If the proprietor or proprietors object to such an arrangement, or if the Revenue-authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jama, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors, or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement.

The separate settlement may be permanent, if the settlement of the original estate is permanent.

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, section 4, Reg. XI, 1825.

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Reg. VII, 1822; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

3. Every separate settlement of alluvial land heretofore made shall be as good and effectual for the purposes specified in section 1 as the same would have been if made subsequently to the passing of this Act.

the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Fifth.—In all other cases, *viz.*, in all cases of claims and

Disputes relative to lands gained by alluvion or by dereliction not provided for by Regulation.

disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice,

in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or if not, by general principles of equity and justice.

5. Nothing in this Regulation shall be construed to

Encroachments on beds of navigable rivers and other obstructions.

justify any encroachments by individuals on the beds or channels of navigable rivers, or to prevent Zila and

City Magistrates or any other officers of Government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

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Preamble.

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It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Reg. VII, 1822; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

3. Every separate settlement of alluvial land heretofore made shall be as good and effectual for the purposes specified in section 1 as the same would have been if made subsequently to the passing of this Act.

Provided that nothing contained in this Act shall be held to affect the rights which any person may have acquired, under a judicial decision or otherwise, before the passing of this Act.

Saving of rights.

ACT No. IX OF 1847.

*An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar and Orissa.**

1. IT is hereby enacted that such parts of the Regulations of the Bengal Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the Provinces of Bengal, Behar and Orissa; and that all such investigations pending before the Collectors and Deputy Collectors in the said Provinces at the said date shall forthwith be discontinued; and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof, except under the provisions of this Act.

Repeal of Enactments.

Investigations as to alluvial lands.

Act IX of 1847 was intended to apply only to land gained from the sea or from rivers by alluvion or dereliction, not to land gained from another proprietor by the mere changing of the river's courses.—15 B. L. R., 49.

Act IX of 1847 refers to resurveys of zemíndári lands, which the Government as such may cause to be made at certain intervals, and to assessments consequent on the changes ascertained by such re-surveys; but does not interfere with the rights of the Government in its capacity of a zemíndár to take possession of and assess all accretions to its own estates under Reg. XI of 1825.—4 W. R., Civ., 59.

Act IX of 1847 does not alter the state of the law under Reg. XI of 1825, but merely lays down a procedure. There is nothing in Act IX of 1847 to prevent the Government from taking possession of a char, after it has silted up, if the char be one that the Government would be entitled to under Reg. XI of 1825.—6 B. L. R., 255, F.B.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

2. The expression 'Province of Orissa' in this Act shall be taken to mean only so much of the Province of Orissa as is subject to the Government of Bengal.

'Province of Orissa' defined.

3. Within the said Provinces it shall be lawful for the Government of Bengal in all districts or parts of districts of which a revenue-survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

Power to direct new survey of riparian lands.

4. The approval of the revenue-surveys of districts or parts of districts which may be hereafter surveyed, shall be deemed to have taken place on such day as may be specified as the day of such approval in the Calcutta Government Gazette.

Date of approval of surveys.

5. Whenever on inspection of any such new map it shall appear to the local Revenue-authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the sadr jama of the said estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the mofussal jama of the land lost bears to the mofussal jama of the whole estate; but if the mofussal jama of the whole estate or of the land lost cannot be ascertained to the satisfaction of the local Revenue-authorities, then the said local Revenue-authorities shall make a deduction from the sadr jama of the estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the Sadr Board of Revenue, whose orders thereupon shall be final.

Deduction from jama of estates from which lands have been washed away.

6. Whenever, on inspection of any such new map, it shall appear to the local Revenue-authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Sadr Board of Revenue, whose orders thereupon shall be final.

Assessment of increments to revenue paying estates.

Certain land, which formed part of the plaintiff's zemíndári, became, on its reformation after sub-mergence by a change in the course of the river Ganges, attached to the zemíndári of J., and it being found so attached, an additional jama was, after proceedings taken by the Revenue-authorities under Act IX of 1847, assessed against J., in respect of it. In a suit in the Civil Court brought by the plaintiff against the Government, J., and L., an ijárádar under J., to recover possession of the land,—*held*, that the suit was not barred by the proceedings under Act IX of 1847. Section 6 of that Act makes the orders passed under its provisions final only against the zemíndár, not against third persons. Nor would s. 9 bar the suit : the words of that section do not necessarily extend to forbidding a suit brought to recover property which the Government or its officers may be instrumental in keeping away from the rightful owner.—15 B. L. R., 49.

Although a settlement made by the Revenue-authorities under Act IX of 1847 is final, the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled.—I. L. R., 4 Cal. 103.

The word 'added' means added to the estate as it is depicted in the survey map.—19 W. R., 127.

7.—[*Repealed by Bengal Act No. IV of 1868.*]

8.—[*Repealed by Act No. XIV of 1870.*]

9. Except as regards the proprietary right to islands, no suit or action in any Court of Justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act.

Indemnity clause.

ACT No. IV. (B.C.) OF 1868.

An Act to amend the provisions of Act IX of 1847 (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar, and Orissa.)

WHEREAS it is expedient to amend the provisions of Act IX of 1847 ; It is enacted and declared
Preamble. as follows :—

1. Section 7 of the said Act IX
Repeal of Section 7. of 1847 is hereby repealed.

2. It is hereby declared that when any island shall, under the provisions of clause 3, section 4 of Reg. XI of 1825 of the Bengal Code, be at the disposal of Government, all lands gained by gradual accession to such island, whether from a recess of the river or of the sea, shall be considered an increment to such island, and shall be equally at the disposal of Government.
Accessions to island to be considered increment thereto.

3. Whenever it shall appear to the local Revenue-authorities that an island has been thrown up in a large and navigable river liable to be taken possession of by Government under clause 3, section 4 of Reg. XI of 1825 of the Bengal Code, the local Revenue-authorities shall take immediate possession of the same for Government, and shall assess and settle the land according to the rules in force in that behalf, reporting their proceedings forthwith for the approval of the Board of Revenue, whose order thereupon, in regard to the assessment, shall be final. Provided, however, that any party aggrieved by the act of the Revenue-authorities in taking possession of any island as aforesaid, shall be at liberty to contest the same by a regular suit in the Civil Court.
Newly thrown up islands to be assessed.

When a char was temporarily settled and sold for arrears of Government revenue, it was held that the auction-purchaser was not authorized to eject the defendants' ryots, who were in possession when the settlement, under which the auction-purchaser holds, was concluded, but that he is entitled to take possession of lands not actually cultivated by them, but held from them as a subordinate tenure by under-tenants.—S. D. A., 1859, p. 1456.

In this case the defendants pleaded that they were protected from ouster by clause 3, section 26 of Act I of 1845. The High Court held that the defendants had no right to hold any intermediate independent tenure on *char* lands. In this case no reference is made to Act X of 1859 passed the same year.

Adverse possession of *char* lands for twelve years is a bar to a suit for possession ; nor can it be urged that limitation only runs from the time such lands become culturable. But the High Court have held that possession under temporary leases granted by a Collector is not adverse possession, rights during a temporary settlement being only in abeyance and not extinguished.—8 W. R., Civ., 287 ; *et aliunde*.

4. Any island of which possession may have been taken by the local Revenue-authorities on behalf of the Government under section 3 of this Act, shall not be deemed to have become an accession to the property of any person by reason of such channel becoming fordable after possession of such island shall have been so taken.

Subsequent junction to mainland not to affect Government right.

5. Whenever an island, of which possession shall have been taken by Government under section 3 of this Act, shall become attached to the mainland, any person, having an estate or interest in any part of the riparian mainland to which such island may become attached while it is in the possession of the Government, may apply to the Collector to take measures for the construction of ways, paths, and roads on the island : the costs thereof to be equally divided between the applicant and the Government.

Power to apply for ways across islands.

6. Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient, and on such deposit being made, the Collector shall proceed to lay out and construct such ways, paths, and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached.

Applicant for ways to deposit money, and ways to be made.

7. In every case the applicant shall be liable to pay and make good to the Government one-half of the costs of laying out and constructing such ways, paths, and roads and any moneys due from the applicant.

Costs of ways how to be borne.

under the provisions of this section may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid.

8. Every way, road, and path which shall be laid out or appointed under the provisions aforesaid, shall be deemed a public highway.

Ways to be public.

Part II.

Certificates.

ACT No. XXVII OF 1860.

An Act for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to consolidate and amend certain Acts now in force which provide greater security for persons paying to the representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and which facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same; It is enacted as follows:—

Preamble.

Repealed, except as to Hindus, Mahomedans, and Buddhists and persons exempted by s. 332 of the Indian Succession Act, 1865, from the operation of that Act, by Act XXIV of 1867. Declared to apply (so far as unrepealed) to the whole of British India except the Scheduled Districts, Act XV of 1874. As to the court-fee on certificates, see Act VII of 1870, Sched. I, No. 12.

The object of Act XXVII of 1860 is, not to enable parties to litigate questions of disputed title, but to enable debtors to pay the debts due by them with safety to the representatives of deceased Hindus and others; and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same. In other words, the objects of the Act are to enable debtors to get sufficient acquittances when they pay money due to the estate of a deceased person; and to preserve that estate from loss by giving some one the right to collect the debts, lest they should be lost, *e. g.*, by the operation of the law of limitation.

The holder of a certificate is a trustee liable to account for the monies received by him to the legal heirs or representatives of the deceased.—I. L. R., 8 Calc., 868.

1. Act XX of 1841 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*): so much of Act VIII of 1842 as relates to the said Act XX of 1841: Act X of 1851 (*to amend Act XX of 1841 for the administration of personal estate of deceased persons*): and Act VIII of 1854 (*to explain and amend Act X of 1851 and Act XX of 1841*) are hereby repealed; except as to certificates granted and acts done under the authority of the said laws before the passing of this Act.

2. No debtor of any deceased person shall be compelled in any Court to pay his debt to any person claiming to be entitled to the effects of any deceased person or any part thereof, except on the production of a certificate to be obtained in manner hereinafter mentioned or of a probate or letters of administration, unless the Court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.

A son adopted in pursuance of an *anumati pattra* (power to adopt), some time after the death of his adoptive father, does not require, and is not entitled to obtain, a certificate under Act XXVII of 1860, to enable him to collect debts in respect of the properties left by his adoptive father, which became due while they were under the management of his adoptive mother.

The estate of the adoptive father, if the adoption is a good one, vests immediately on the adoption in the adopted son; and debts to it, if they become due after the death of the adoptive father, are debts recoverable by the adopted son in his own right, and not as representative of his adoptive father.—I. L. R., 5 Calc., 251.

It is not an imperative condition precedent to the institution of a suit by the legal representative of a deceased person for a debt due to his estate that such legal representative should first obtain a certificate under Act XXVII of 1860.—I. L. R., 4 All., 485.

The representative of an assignee by devise of a debt cannot sue to recover the debt without having either taken out probate of the will of the testator, or having obtained a certificate under Act XXVII of 1860, to realize the debts belonging to his estate.—I. L. R., 4 Calc., 645.

3. The District Court within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if
Certificate how to be obtained

at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, shall have authority to grant a certificate under this Act. The applicant in his petition shall set forth his title. The Court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day or as soon after as may be convenient, shall determine the right to the certificate and grant the same accordingly.

A certificate to collect debts may be granted to a minor by his next friend.—5 C. L. R., 517

A. as widow of *B.* and guardian, under a will, of his minor son, obtained a certificate of administration under s. 3 of Act XL of 1858. *C.* another widow of *B.* subsequently applied for a certificate under s. 3 of Act XXVII of 1860. The Judge summarily rejected *C.*'s application, on the ground that the grant of a certificate to her would lead to confusion. *Held* on appeal, that the Judge ought to have issued notices and proceeded under s. 3, Act XXVII of 1860.—2 B. L. R., 129, A.C.

A person was trustee of 'waqf' or trust property. He had also some other property (how much was not clear) of his own. He made a will relating only to the trust property, and appointed an executor. *Held*, that the executor, mentioned in the will, was entitled to a certificate under Act XXVII of 1860 with regard to the trust property; and the legal personal representative of the deceased was entitled to a certificate under the same Act with respect to any other property of which he died possessed.—3 B. L. R., 46, A. C.

Where there are rival claimants for a certificate to collect the debts of a deceased person, the Judge has a discretion to present it to such person as, under the circumstances of the case, shall appear best entitled to it. *Quære*—Has he power under the Act to grant them a joint or separate certificate?—4 B. L. R., 149, A.C.

In Miscellaneous Regular Appeal No. 510 of 1869, it was held by Glover and Hobhouse, JJ., that "mere nearness of kin is no reason by itself for the grant of a certificate. The Court is bound to determine who is a fit and proper person to obtain the certificate. It looks to fitness as well as to propinquity."

The person entitled to collect the outstanding debts due to the private estate of a deceased Mohunt, is the spiritual son (*chela*), and not the spiritual brother (*Guru bhai*) of the deceased.—I. L. R., 4 Calc., 954.

The Court will refuse to grant an application for a certificate to collect the debts of an intestate who has been dead forty years at the time of making the application, the presumption being that, owing to the operation of the law of limitation, there could be now no debts due to him which could be recovered.—I. L. R., 3 Calc., 616.

Under Mithila law the mother of a minor is entitled to a certificate of guardianship in preference to the father.—I. L. R., 5 Calc., 43.

K. B., a Hindu governed by the Mitakshara law, died leaving two sons, *G. P.*, and *K. P.*, a minor, and a widow, *G. K.*, the mother of *K. P.* *Held*, on applications by *G. P.* and *G. K.* respectively to obtain certificates under Act XXVII of 1860, to collect the debts due to the estate of *K. B.*, that *G. P.* alone was entitled to obtain such a certificate, and on the application of *G. K.*, for a certificate to take charge of the estate of her

or to negotiate the same or any of them : in such case the certificate shall describe the securities and shares in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words.

9. In the case of disputes among persons claiming to be jointly entitled to be proprietors of any Government Securities as the representatives of any deceased person, the District Court, whenever sufficient

Appointment of trustee in case of disputed succession.

cause shall be shown, and on the request of any such claimant, may, so far as concerns the said securities, grant a certificate under this Act to such person as shall be from time to time appointed by the local Government to act as trustee under this section, and shall specify in such certificate the several persons appearing to him to be such proprietors and their several shares ; and the said trustee, by virtue of such certificate, shall be entitled to receive and give discharges for the interest accruing due on such securities, and shall account for and pay the sum to the several persons specified in the certificate to be thereunto entitled, according to the shares therein set forth, and shall be empowered to act in all other respects concerning the said securities as agent for such persons and shall be entitled to receive such commission, not exceeding one per centum, on the sums received and paid by him, as the local Govern-

Proviso.

ment shall think fit : Provided nevertheless that the right of any other person to recover the whole or any part of the monies so paid by regular suit against all or any of the persons to whom the same have been paid, shall not be affected by this Act.

10. If any such disputes among persons claiming to be proprietors of Government Securities are not ended within two years from the date of the certificate granted under the last preceding section, the

Appropriation if securities be not settled within two years.

said trustee may apportion the principal sum of the said securities ratably among the parties appearing from the certificate to be proprietors thereof, and may apply for and receive new securities from the proper Officer appointed to issue the same in the respective names of the several parties certified to be entitled thereto ; provided that such

new securities shall be issued only according to the rules in use for the regulation and issue of such Government Securities, and the receipt of the said trustee for such new securities, by endorsement on the old securities or otherwise, shall be a legal discharge to the Government against the disputing parties claiming to be entitled to the several amounts for which such securities shall be issued : Provided

Proviso. always that, if the amount of any Government Securities in dispute or

any part thereof shall not be sufficient to admit of their ratable division according to the rules applicable to the issue of such securities, the said trustee may sell and dispose of the disputed securities, or such part as shall be necessary under this provision, and apportion the proceeds thereof among the parties entitled to receive the same.

11. Every certificate granted to the trustee appointed under section 9, shall be taken to

Effect of certificate granted by trustee.

certificate so far as such previous certificate relates to the said Government Securities.

12. When a certificate shall have been granted, in cases in which such certificate would

Payments under certificate void by reason of previous certificate.

be valid but for the previous grant of a certificate, all payments made to the person holding the latter certificate in ignorance of the grant of the previous certificate, shall be held good against claims under such previous certificate.

13. With regard to the property of a deceased

Certificate in respect of property of deceased Hindoos, Mahomedans, &c. void after grant of probate or letters.

Hindoo, Mahomedan, or other person not usually designated by the term 'British subject,' no certificate in respect of any such property shall be valid if made after a probate or letters of administration granted in respect of the same, provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the Court granting the probate or letters of administration.

14. Where a certificate shall have been granted, in cases

Certain payments under certificate granted after grant of probate or letters, protected.

in which such certificate would be valid but for a probate or letters of administration previously granted, all payments made to the person holding

the certificate in ignorance of the previous granting of the probate or letters of administration, shall be held good against claims under the probate or letters of administration so previously granted.

15. No probate or letters of administration shall be valid for the purpose of the recovery of debts, or for the security of debtors, after a certificate granted in respect of the same property for which such probate or letters of administration shall have been granted: provided assets belonging to the deceased were at the time of his death within the jurisdiction of the Court granting such certificate.

Probate or letters
void after grant of
certificate.

Proviso.

16. Where probate or letters of administration may have been granted in cases in which such probate or letters of administration would be valid but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.

Certain payments
under probate or letters,
granted after grant of
certificate, protected.

17. Curators appointed under Act XIX of 1841, who may be invested with certain powers which are conferred on persons obtaining certificates under this Act, shall not exercise any powers which, but for that Act, would lawfully belong to persons obtaining certificates, or to executors or administrators where a certificate, probate, or letters of administration has been actually obtained; but all persons who may have paid debts or rents to a curator authorized by a Court to receive the same, shall be indemnified, and the curator shall be responsible for the payment of the same to the person who has obtained a certificate, the executor or administrator as the case may be.

Curators prohibited
from exercising certain
powers.

18. All probates and letters of administration granted by any Supreme Court of Judicature in cases in which any assets belonging to deceased persons were at the time of their deaths within the local jurisdiction of the Court granting the probate or letters

Effect of probates and
letters granted to re-
sidents of British

of administration, shall have the effect of probate and letters of administration granted in respect of the property of British subjects, but for the purpose of the recovery of debts only and the security of debtors paying the same except so far as is in this Act provided.

19. A certificate of administration granted by the British Representative accredited to any Foreign Prince or State, shall, as regards the residents within the Territories of such Prince or State, have the same effect in respect to Government Securities as a certificate granted to a Native subject of Her Majesty under the provisions hereinbefore contained.

20. Every certificate of administration granted under the last preceding section shall, as regards the Government Securities, give authority to the person to whom the same shall be granted throughout the British Territories in India, and have the same effect throughout the said territories as a certificate granted under section 7 of this Act has within the Presidency within which the same is granted.

21. Any Court or Officer authorized to grant a certificate may from time to time extend the same to any Government Security or Bank-share not originally specified therein, and every such extension shall have the same effect as if the Government Security or Bank-share to which the certificate shall be extended had been originally specified therein.

22. Upon the extension of a certificate, security may be required in the same manner as upon the original grant of a certificate.

23. Nothing in this Act contained shall be held to extend to the property of any person usually designated as a British subject.

24. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Number.

Gender.

Words importing the masculine gender shall include females.

The words 'District Court' shall mean the principal Civil Court of original jurisdiction of a Zillah or District.

'District Court.'

The words 'Sudder Court' shall be deemed to include the highest Civil Court of Appeal in any part of the British Territories in India not subject to the control and superintendence of a Sudder Court.

'Sudder Court.'

PART III.

Cesses (Road and Public Works.)

ACT No. IX (B.C.) OF 1880.

[As amended by Act II (B.C.), 1881.]

An Act to amend and consolidate the law relating to rating for the Construction Charges and Maintenance of District Communications and other Works of public utility, and of Provincial Public Works.

WHEREAS it is expedient to amend and consolidate the law relating to rating for the construction, charges and maintenance of district roads and other means of communication, and of provincial public works, within the territories administered by the Lieutenant-Governor of Bengal, and to the levy of a road cess and a public works cess on immoveable property situate therein, and to the constitution of local committees for the management of the proceeds of the said road cess, and also to provide for the construction and maintenance of other works of public utility out of the proceeds of the said road cess: It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

1. This Act may be called “The Cess Act, 1880;”
and it shall come into force from the date on which it
may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Short title and commencement.

2. This Act shall take effect at once in every district
and part of a district in which Bengal
Act X of 1871 (*an Act to provide for local rating for the construction and maintenance of roads and other means of communication*), and Bengal Act II of 1877 (*an Act to provide for the levy of a cess for the construction charges and maintenance of provincial public works*) may be in force on the date of the commencement of this Act:

Extent.

The Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend its provisions to any other district or part of a district situate in the territories for the time being administered by him, and this Act shall take effect accordingly therein from the date specified in such notification;

Provided that nothing herein contained shall be deemed to
affect any immoveable property within
the limits of the ordinary original
jurisdiction of the High Court of Judicature at Fort William in Bengal, or within the limits of any first or second class municipality under the Bengal Municipal Act, 1876.

Proviso.

The Lieutenant-Governor may, by notification in the *Calcutta Gazette*, exempt any district
or part of a district, or any estate or
tenure, from the operation of this Act,
or from the operation of so much
thereof as relates to the road cess, or as relates to the public works cess, and may at any time, by a similar notification, revoke such exemption.

Power to exempt districts from operation of Act.

3. The said Bengal Act X of 1871 and the said Bengal Act II of 1877 are hereby repealed;
but this repeal shall not affect the
past operation of such Acts, or any-
thing duly done or suffered, or any

Repeal of District Road Cess Act, 1871, and Provincial Public Works Act, 1877.

right, privilege, obligation, or liability acquired, accrued, or incurred thereunder ;

And all rules, orders, appointments, and valuations in force at the commencement of this Act which were made under the said Acts, shall, so far as they are consistent with this Act, be deemed to have been made under this Act ;

And all cesses which were imposed under the said Acts shall be deemed to have been imposed under this Act, and every sum due to the Collector in respect of arrears of cess, of expenses incurred, of fees or costs payable, of notices served, or of fines imposed under either of the said Acts, shall be deemed to be due on such accounts under this Act ;

And all cesses so imposed and every sum so due may be levied as herein provided.

4. In this Act, unless there be something repugnant in Interpretation-clause. the subject or context—

‘ Annual value of any land, estate or tenure ’ means the total revenue or rent which is payable, or if no revenue or rent is actually payable, would on a reasonable assessment be payable during the year by all the cultivating ryots of such land, estate, or tenure, or by other persons in the actual use and occupation thereof :

‘ Commissioner. ’ ‘ Commissioner ’ means the Commissioner of the Division :

‘ Cultivating ryot ’ means a person cultivating land and paying rent therefor not exceeding one hundred rupées per annum :

Explanation.—When rent is payable in kind, the money-value thereof shall, for the purposes of this Act, be taken to be the annual value of the landlord’s share of the crop calculated on an average of the three years next preceding any valuation or revaluation under this Act :

‘ District ’ means the local area to which a Collector is appointed, and no lands situate beyond the limits of such local area shall be deemed to form part of a district by reason of their forming part of an estate paying revenue to the Collector thereof :

‘Estate’ means (1) land included under one entry in the general registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the ‘Land Registration Act, 1876,’ or any similar law for the time being in force ;

(2) any land other than the holding of a cultivating ryot, the revenue or rent of which may be payable directly to the Collector or any person specially appointed by him to collect the same :

(3) any land acquired under any rules issued by, or under authority of, Government, for the sale, grant, lease or clearance of waste lands :

‘Holder of an estate or tenure’ means all or any of the holders thereof, and where two or more persons are jointly holders thereof, they shall be jointly and severally liable under this Act :

‘Holding’ means the land held by a cultivating ryot :

‘Immoveable property’ includes lands and all benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings :

‘Land’ means land which is cultivated, uncultivated or covered with water, and does not include houses or buildings :

‘Part,’ ‘Chapter,’ and ‘Section’ mean respectively a part, chapter, and section of this Act :

‘Schedule’ means a schedule to this Act annexed, and every such schedule shall be read as part of this Act :

‘Tenure’ includes every interest in land, whether rent-paying or not, save and except an estate as above defined, and save and except the interest of a cultivating ryot :

‘The Collector’ includes any person specially invested with the powers of a Collector for the purposes of this Act, and means—

I.—When used in reference to revenue-paying estates

and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of cesses in respect thereof,

the Collector or other similar officer on whose revenue-roll such estates are borne.

II.—When used in reference to revenue-free estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of cesses in respect thereof,

the Collector or other similar officer on whose general register of revenue-free lands such estates are borne :

‘The Collector of the district’ includes any person specially invested with the powers of a Collector for the purposes of this Act, and means the officer in charge of the revenue administration of a district :

‘The Committee.’ ‘The Committee’ means the District Road Committee of any district :

‘Year.’ ‘Year’ means the cess year as determined by the Lieutenant-Governor under section 11.

PART I.

CHAPTER I.—*Imposition and Application of the Cesses.*

5. From and after the commencement of this Act in any district or part of a district all immovable property situate therein, except as otherwise in sections 2 and 8 provided, shall be liable to the payment of a road cess and a public works cess.

6. The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways, and other immovable property, ascertained respectively as in this Act prescribed ;

and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed ;

Provided that the rate at which each such cess shall be levied for any one year shall not exceed the rate of one-half anna on each rupee of such annual value and annual net profits respectively.

7. Nothing in this Act contained shall be deemed to require the payment by the Lieutenant-Governor of Bengal, from the public revenues, of any sum as road cess in excess of such sums as may have been paid as such cess to the Collector by persons liable to pay the same.

Public revenues not liable for more road cess than has been paid to Collector by persons liable.

8. No railway or tramway, the property of the Government of India, and no railway or tramway of which the dividend is guaranteed by Her Majesty's Secretary of State for India in Council, or by the Governor-General of India in Council, or by the Lieutenant-Governor of Bengal shall be liable to road cess or public works cess under the provisions of this Act without the previous consent of the Governor-General of India in Council.

Government and guaranteed railways not liable to the cesses without consent of Governor-General in Council.

9. The proceeds of the road cess in each district shall be paid into the District Road Fund of such district, as hereinafter provided, and, together with other assets of such fund, shall be applied to the purposes mentioned in section 109.

Application of proceeds of road cess.

As amended by Act II, 1881, B.C.

10. The proceeds of the public works cess and all interest paid thereon shall be paid into the public treasury, and shall be applied (1) to the payment of such contributions to the District Road Fund as the Lieutenant-Governor may think proper in consideration of the said cess being assessed and collected jointly with the road cess by establishments paid from the District Road Fund; and (2) to the construction charges and maintenance of Provincial Public Works, and to the payment of interest on capital which may have been expended, or which may hereafter be expended, on such works in such manner as the Lieutenant-Governor may direct.

Application of proceeds of public works cess.

As amended by Act II, 1881, B.C.

11. The Lieutenant-Governor shall, by an order published in the *Calcutta Gazette*, fix the date from which the cesses leviable under this Act in any district or part of a district shall take effect therein, and may fix and from time to time alter the date from which the cess year shall run in any district or part thereof.

Power to fix cess year.

PART II.

MODE OF ASSESSMENT.

CHAPTER II.—*Valuation of Lands.*

12. Upon the commencement of this Act in any district or part of a district the Lieutenant-Governor may order valuation shall be made of such district or part of a district ;

and from time to time after the expiration of the term of five years from the beginning of the year in which the levy of the cesses took effect in accordance with any such valuation, or with any revaluation as hereafter provided in this section, or at any time within twelve months previous to the expiration of such term,

the Lieutenant-Governor may, if he think fit, order that a revaluation shall be made of any such district or part of a district, and such revaluation shall take effect from the beginning of such year as the Lieutenant-Governor may direct.

13. Whenever the term of five years shall have expired from the beginning of the year in which the levy of the cesses took effect in any estate or tenure in accordance with any valuation or revaluation under this Act or Bengal Act X of 1871, the holder of any such estate or tenure may apply to the Collector to revalue his estate or tenure, and for such purpose shall lodge in the office of the Collector returns in the form in Schedule (A) contained ; and thereupon the Collector shall proceed to revalue such estate or tenure, and if he make

After five years holder of estate or tenure may apply to Collector for revaluation.

any alteration in the valuation of any such tenure, shall give notice of such alteration to the holder of the estate or superior tenure in which such tenure is included, and shall alter the valuation of such estate or superior tenure accordingly ;

Provided that no revaluation or reduction of the amount of cesses previously payable in respect of any estate or tenure, in consequence of a revaluation under this section, shall take effect until the beginning of the year commencing next after such revaluation, unless the application for revaluation shall have been made, and the necessary returns lodged in the Collector's office within three months after the beginning of a year, in which case such revaluation and reduction, if any, shall take effect from the commencement of such year.

14. Whenever the Lieutenant-Governor has ordered that a valuation or a revaluation of any district or part of a district shall be made for the purposes of this Act, the Collector of the district shall cause a proclamation to be issued requiring every holder of an estate or tenure which is liable to pay an annual amount of revenue or an annual amount of rent exceeding one hundred rupees, and every holder of a revenue-free estate or rent-free tenure, the gross annual rental of which exceeds one hundred rupees, severally to lodge at the office of such Collector within one month a return of all lands comprised in his estate or tenure in the form in Schedule (A) contained, giving the particulars in such form set forth.

The Collector of the district shall cause such proclamation to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every Police-station, and in the office of every Subdivisional Officer within the district, and in any other manner which the Lieutenant-Governor may from time to time direct.

It was ruled under s. 5 of Act X of 1871, that *bhaoli* lands are to be included in the returns. Where such lands are not included, the holder of the estate or tenure is precluded from suing for or recovering rent due therefor.—I. L. R., 9 Calc., 62.

15. At any time at which the Lieutenant-Governor might order a revaluation of a district or part of a district to be made as provided by section 12, he may, if he think fit, instead of so ordering, make an order that particular estates or tenures only in such district or part of a district shall be revalued.

16. Whenever any proclamation has been published, as mentioned in section 14, in any district, and whenever the Lieutenant-Governor has made an order, under the last preceding section, that a revaluation of particular estates and tenures only shall be made, the Collector shall cause a notice to be served in respect of every estate and tenure which is to be valued or revalued, and in respect of which no return shall have been lodged in accordance with the requirement of such proclamation, requiring every holder of such estate or tenure severally to lodge at the office of the Collector the return mentioned in section 14; and shall also cause a similar notice to be served in respect of every tenure included in any such estate or tenure which may have been named in any return lodged in pursuance of the provisions of this Act, or of Bengal Act X of 1871, either for the purposes of the valuation or revaluation then contemplated, or for the purposes of any previous valuation or revaluation, or of which the existence may in any other way have come to his knowledge.

17. The notice mentioned in the last preceding section shall be in the form No. I in Schedule Form of notice and time for lodging returns. (B) contained, or in the form No. II in the said Schedule contained, as the case may be, and shall require every holder of the estate or tenure severally to lodge the return within the time specified below, *viz.* :—

In the case of Revenue-paying Estates and Rent-paying Tenures:—

If the return relate to an estate or tenure which is liable to the payment of annual revenue or of rent not exceeding Rs. 500, or to any share or interest in such estate or tenure

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein

Within three months of the service of the notice.

In the case of Revenue-free Estates and Rent-free Tenures :—

If the return relate to any estate or tenure of which the gross annual rental does not exceed Rs. 500, or to any share or interest in such estate or tenure

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein

Within three months of the service of the notice.

The Collector may in his discretion extend the time allowed for lodging any such return.

18. All holders of estates or tenures in respect of which such notice has been served who shall, without sufficient cause being shown to the satisfaction of the Collector, refuse or omit to lodge the required return in the office of such Collector within the time allowed by such notice in respect of the estate or tenure which they hold, or within any extended time which may have been allowed by the Collector for lodging such return, shall be severally liable to a fine which may extend to fifty rupees for every day after the expiration of such time or extended time until such return is furnished, or until the value of the lands comprised in their respective estates and tenures shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

The amount of such fine accruing due from time to time may be levied by the Collector as provided in section 98 or 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner shall otherwise direct.

Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

19. From and after the expiry of the time allowed by the notice, or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has

No rent to be recovered till return is made.

been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

The Collector may send a list to the Civil Court of all such holders so making default in lodging returns as aforesaid, and such Court shall take judicial notice of the same.

Whenever the required return is lodged in respect of any estate or tenure, or whenever the valuation of any such estate or tenure has been otherwise completed, the disability imposed on the holder thereof by this section shall cease; and if such estate or tenure shall have been included in any list as aforesaid, the Collector shall forthwith give notice to the Civil Court of the cessation of such disability.

20. Every holder of an estate or tenure in respect of

<p>No rent to be recovered for land, &c., not mentioned in return.</p>	<p>which a return has been made as required by this Chapter shall be precluded from suing for or recovering—</p>
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(a) any rent whatsoever for any land, holding or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

(b) rent at any higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return :

<p>Provided that the Collector may at his discretion, at any time within six months from the presentation of any return made under this Part, receive a petition correcting any such return ;</p>	<p>Proviso.</p>
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and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required ;

and as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected shall have paid in all sums due by him as road cess and public works cess in accordance with such corrected valuation, and not otherwise, such person may recover such rent

as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in respect of such tenure or land.

Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid.

21. If no return shall have been lodged in respect of any lands for which notice under section 16 has been issued, the Collector may, after the expiration of the time allowed by the notice, or of such extended time as is mentioned in section 17, ascertain and fix, by such ways and means as to him shall seem expedient, the annual value of any estate, tenure or lands mentioned in such notice; and all expenses incurred in making such valuation may be recovered with all costs of recovery thereof as provided in sections 98 and 99.

22. Whenever the maker of any return under this Act has been convicted on a prosecution under section 94 of making a false return relating to any lands, the Collector may, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of such lands;

and the expense of such valuation may be recovered from the maker of such return as provided in sections 98 and 99.

23. Whenever the Collector may deem that any return lodged relating to lands for which no rent is payable by cultivating ryots to the person making such return is untrue or incorrect, he may, whether any prosecution as mentioned in section 94 shall have been instituted or not, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of such lands; and in case the annual value of such lands so determined by him shall exceed by one-fifth the value stated in such return, the expense of such valuation may be recovered from the person by whom such return was lodged, as provided in sections 98 and 99, and in all other cases the said expense shall be borne by the District Road Fund.

24. The Collector may, whenever he may think fit, cause a notice in the form No. I in Schedule (B) contained to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating ryot; and thereupon such person shall be bound to make a return of the annual value of such lands within one month from the service of such notice in the form in Schedule (A) contained, and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fines respectively shall be applicable to such person.

25. If no return is made by any person on whom a notice has been served as provided in the last preceding section, the Collector may proceed by such ways and means as to him shall seem expedient to ascertain the annual value of the lands held by such person; and in case it appears that such annual value is greater than the rent paid by such person, the expense of such valuation shall be borne by such person and may be recovered with all costs of recovery thereof as provided in sections 98 and 99, but in all other cases shall be borne by the District Road Fund.

26. If it shall appear to the Collector that any person on whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating ryot, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder; and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the cesses in respect of the lands held by him.

27. Whenever the revenue annually payable in respect of any estate, or the rent annually payable in respect of any tenure does not exceed the sum of one hundred rupees, the Collector may without issuing any notice for such estate or tenure—

(a) in any case, determine the annual value of the land comprised therein to be, in a permanently settled estate or

tenure, a sum not exceeding three times, and in a temporarily settled estate or tenure, a sum not exceeding twice the amount of the annual revenue or rent payable therefor; or

(b) when the area of the said estate or tenure has been ascertained, determine the annual value of such estate or tenure to be at such rate per acre as to him shall seem fit.

28. When the area of any revenue-free estates or rent-free tenure, the gross rental of which does not exceed, or is not estimated by the Collector to exceed, the sum of one hundred rupees, has been ascertained, the Collector may, without issuing any notice for such estate or

Summary valuation of small revenue-free estates and rent-free tenures of which the area has been ascertained.

tenure, determine the annual value of such estate or tenure to be at such rate per acre as to him may seem fit.

29. When the land contained in any estate or tenure has been summarily valued by the Collector in the manner provided by clause (a) of section 27, the annual value of any portion of such land which is comprised within a tenure subordinate to such estate or tenure

Computation of annual value of land comprised in a subordinate tenure in a summarily valued estate or tenure.

shall be determined according to the following rules:—

(1)—When the subordinate tenure comprises the whole of the estate or superior tenure, the annual value of the subordinate tenure shall be taken to be the same as that of the estate or superior tenure.

Example.—An estate paying a revenue of Rs. 80 is summarily valued by the Collector under clause (a) of section 27 at Rs. 200. The whole estate is let in patni for a rent of Rs. 120. The annual value of the patni tenure will be Rs. 200.

(2)—When the subordinate tenure comprises a part only of the land constituting the estate or superior tenure—

(a) The difference between the annual value of the estate or superior tenure, and the revenue or rent payable in respect of such estate or superior tenure shall first be ascertained;

(b) Next, the ratio which such difference bears to such revenue or rent shall be ascertained;

(c) Then the amount which bears the same ratio to the rent payable in respect of the subordinate tenure shall be ascertained;

(d) Half of the amount so ascertained shall be added to the rent payable in respect of the subordinate tenure, and the result shall be taken to be the annual value of the subordinate tenure.

Example A.—An estate paying revenue of Rs. 60 is summarily valued by the Collector under clause (a) of section 27 at Rs. 100. A part only of the estate is let in patni for a rent of Rs. 37-8.

The difference between the annual value of the estate (Rs. 100) and the revenue paid in respect of it (Rs. 60) is Rs. 40. This difference bears a ratio of two-thirds to this revenue (Rs. 60).

The amount which bears the same ratio (two-thirds) to the rent payable in respect of the patni (Rs. 37-8) is Rs. 25 ;

add half of Rs. 25 to the rent payable in respect of the patni tenure, and the result (Rs. 37-8 + Rs. 12-8 =) Rs. 50 will be the annual value of the patni tenure.

Example B.—Within the patni tenure paying a rent of Rs. 37-8, as in example A, is a darpatni tenure paying a rent of Rs. 27.

The difference between the annual value of the patni tenure ascertained as above (Rs. 50) and the rent payable in respect of the patni (Rs. 37-8) is Rs. 12-8, which bears a ratio of one-third to the said rent.

The amount which bears the same ratio (one-third) to the rent payable in respect of the darpatni (Rs. 27) is Rs. 9 ;

add half of Rs. 9 to the rent payable in respect of the darpatni, and the result (Rs. 27 + Rs. 4-8 =) Rs. 31-8 will be the annual value of the darpatni tenure.

30. When the land contained in any estate or tenure has been summarily valued according to a rate per acre, under clause (b) of section 27, or under section 28, the annual value of the land comprised in any subordinate tenure shall be taken at the same rate per acre as that of the estate or superior tenure.

31. The holder of any estate or tenure which has been summarily valued under section 27 or 28 may, within one month from the posting of the valuation roll in respect thereof under section 35, lodge a return in the form in Schedule (A) contained in regard to such estate or tenure, and thereupon such return shall be deemed to be a return made as required by section 16 and shall be dealt with accordingly.

32. Instead of proceeding to value any estate or tenure summarily under the provisions of section 27 or 28, the Collector may, if he think fit, cause a notice to be served

in respect of any such estate or tenure in the form No. I in Schedule (B) contained, or in the form No. II in the said Schedule contained, as the case may be, and thereupon all the provisions of this Part shall apply in the same way as they would have applied if the annual Government revenue or rent payable in respect of such estate or tenure had exceeded one hundred rupees.

Lands used for Tea, Coffee, or Cinchona.

33. In the case of lands acquired under any rules issued by, or under the authority of, the Government for the sale, lease, grant or clearance of waste lands, or held directly from Government, and used for the cultivation of tea, coffee or cinchona, the Collector shall, in lieu of the notice prescribed by section 16, cause a notice to be served calling on the holder of such lands to lodge, within two months of the service of such notice, a return in the form in Schedule (C) contained, giving the particulars in such form set forth; and the annual value of such lands shall be fixed at ten rupees* in respect of every acre therein entered as cultivated, unless the Board of Revenue shall in any particular case prescribe a lower rate. The provisions of sections 18 and 21 shall apply to all lands in respect of which a notice has been issued under this section.

Publication of Valuation Rolls and Duration of Valuations.

34. Whenever any valuation or revaluation is made under this Part, the Collector shall cause to be prepared from the returns furnished to him and from the valuations made by him in accordance with this Act a valuation roll of each estate within his district and of the tenures therein comprised, noting thereon for each estate the amount of revenue annually payable to Government on which the deduction specified in section 41 is to be calculated.

On the application of any holder of an estate or tenure or holding, and on payment of such copying fee as the

Board of Revenue shall from time to time determine, the Collector shall cause to be furnished to such holder a copy or corrected copy of so much of any such returns, and of any such roll as relates to the lands included within his estate, tenure or holding.

35. On the completion of every roll prescribed under this Part, the Collector shall cause a copy thereof to be posted up at the māl cutcherry of the estate to which such roll refers, and shall cause extracts of such portions of any such roll as refer to any tenure to be posted up at the māl cutcherry of such tenure ;

Provided that, if no such māl cutcherry be found, such roll and such extracts shall be posted up at some conspicuous places on the estate and tenures respectively to which they refer, and that if such estate or tenure cannot be found, such roll and such extracts shall be posted at some conspicuous place in any village in which such estate or tenure is believed to be situate.

The person who is entrusted with the publication of any such return shall obtain an acknowledgment in writing signed by two persons who may be either respectable residents of the neighbourhood, or chowkidars, or other officers of Government, to the effect that such return was duly published on the spot, and shall give in such acknowledgment to the Collector.

36. Except as otherwise in this Part expressly provided, every valuation and revaluation made under this Chapter shall remain in force for the term of five years from the date fixed by the Lieutenant-Governor under section 12 as the date from which the cess leviable in pursuance thereof shall take effect, and thereafter, until another revaluation and assessment in substitution therefor shall have been ordered and completed.

37. Nothing in section 36 contained shall be held to debar the Collector, with the sanction of the Board of Revenue, from making at any time any reduction which he may think fit in the valuation of any estate or tenure ;

or from making a valuation of and assessing and levying cess under the rules laid down in this Part upon any estate or tenure which for any reason whatever has been omitted from the valuations and assessments for the time being in force, or which was not in existence when such valuation or assessment was made.

CHAPTER III.—*Rating and Levying of the Cesses.*

38. The road cess for each year shall be assessed and levied in each district as provided in section 6, and, subject to the maximum rate in that section mentioned, at such rate as may be determined for such year by the Committee of such district with the approval of the Commissioner under section 150 or 151, or with the approval of the Lieutenant-Governor under section 153, as the case may be, or at such rate as the Lieutenant-Governor may order under section 153.

39. The public works cess for each year shall be assessed and levied in each district as provided in section 6, and, subject to the maximum rate in that section mentioned, at such rate as the Lieutenant-Governor may determine for such year.

40. When the rate of road cess and public works cess to be levied in any district shall have been determined for any year and published in the *Calcutta Gazette* as provided in section 155, the Collector of the district

shall cause the rate so determined to be published by affixing a notification in some conspicuous place in the office of the said Collector, in every Civil Court, in every Police-station, and in the office of every Subdivisional Officer within the district,

and shall cause such rate to be proclaimed by beat of drum throughout the district,

and shall cause to be served on the holder of every estate within the district a notice showing the amount of

road cess and public works cess payable in respect of his estate, and specifying the date from which such road cess and public works cess will take effect;

Provided that it shall not be necessary to serve such notice when no change has been made in the valuation of the estate or in the rate of road cess or public works cess since the issue of the last notice under this section.

40*a*. Notwithstanding anything in the definitions of 'estate' and 'tenure' in section 4 Recovery of cess from tenures in Government estates or elsewhere in this Act contained, the Board of Revenue may direct that any land (other than the holding of a cultivating ryot) of which the rent or revenue is payable directly to the Government as proprietor thereof, shall, for the purposes of this Part, be deemed to be a tenure and not an estate, and that the Government shall be deemed to be the holder of the estate within which such tenure is included, and thereupon the Collector may recover any sum payable from such tenure under the provisions of this Act, in the same manner and under the same penalties as if the same were arrears of rent or revenue due to him.

As added by Act II, 1881, B.C.

41. Except as otherwise in this Act provided—

(1)—Every holder of an estate shall yearly pay to the Collector the entire amount of the road cess and public works cess calculated on the annual value of the lands comprised in such estate, at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the revenue entered in the valuation roll of such estate as payable in respect thereof;

(2)—Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the road cess and public works cess calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-

half of the said rates for every rupee of the rent payable by him for such tenure ;

(3)—Every cultivating ryot shall pay to the person to whom his rent is payable one-half of the said road cess and public works cess calculated at the said rate or rates respectively upon the rent payable by him, or upon the annual value ascertained under the provisions of section 24 or 26 of the land held by him.

A chakeran or service tenure comes within the definition of 'tenure' in s. 4, and is therefore liable for cesses.—7 C. L. R., 373.

A jalkar does not impart any interest in the soil itself, and therefore a patni of a jalkar is not an 'interest in land' within the meaning of the definition in the District Road Cess Act.—I. L. R., 9 Calc., 183.

In 1862, at the time the income-tax was in force, A made a patni-settlement of certain lands with B, B agreeing to pay any enhancement of the revenue that might be made by Government at any time, or "any impost in future to be laid by Government. The income-tax to be paid by A according to his income, B having nothing to do with the same."

In 1876, A brought a suit against B for arrears of rent. B, under the contract, claimed to have set-off as a tax on income, a sum which he had paid under the Road Cess Act, which had been passed in 1871. after the income-tax had been repealed.

Held, that the tax imposed by the Road Cess Act passed by the Bengal Council could not be considered to be a tax on income ; the income-tax having been a tax imposed by the Government of India on a person's annual income, levied upon whatever actually came to his hands as income, and not upon the value of his property ; and that, therefore, B could not set-off the amount as being income-tax.

Held also, that although the Road Cess Act contains no saving clause in favour of contracts, it does not prohibit in future the making of contracts which shall interfere with the incidence of the Road Cess as directed by the Act, nor vacate contracts that may have been made before the passing of the Act ; and in the absence of any provisions to that effect, an agreement entered into before the passing of the Act, could not be affected by the subsequent passing of the Act.—I. L. R., 4 Calc., 576.

42. (1)—Every holder of a revenue-paying estate shall pay the amount of road cess and public works cess due by him in equal instalments on the several days fixed under the provisions of section 3 of Act XI of 1859, or of any similar Act at the time being in force for the payment of arrears of revenue due in respect of his estate, or, if such revenue be payable in one annual sum, then on the day fixed for the payment of such sum.

(2)—Every holder of a revenue-free estate shall pay the amount of road cess and public works cess due by him in

two equal instalments or in one annual payment upon such days or day as shall be for that purpose appointed by any order of the Lieutenant-Governor.

(3)—Every holder of a rent-paying tenure and every cultivating ryot shall pay the amount of road cess and public works cess due by him in instalments in the proportion of the instalments of rent payable in respect of the tenure or holding of such tenure-holder or ryot;

Provided that in cases in which, according to local usage or to the terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or ryot shall pay the amount of road cess and public works cess due by him in two equal instalments upon such days as shall be for that purpose appointed by any order of the Lieutenant-Governor.

As amended by Act II, 1881. B.C.

The cess on lands being payable under cl. 1, s. 42 of the Act in respect of revenue-paying estates, on the same dates as the land-revenue, the latest dates of payment are as follows (*vide* Board's Rules, Vol. I, Chap. xiv, Sec. 1, cl. 1) :

Districts in which the Bengali or Umli year is current	...	12th January, 28th March, 28th June, 28th September.
Chittagong	...	25th February, 25th May, 25th June, 25th September, 26th Dec.
Districts in which the Fusli year is current	...	12th January, 28th March, 7th June, 28th September.
Orissa	...	28th April, 8th November.
Darjeeling	...	12th January, 28th June.

Under cl. 2 of the same section of the Act, the following latest dates have been fixed for payment in respect of estates whereon no revenue is payable (*vide* Government Order No. 1827, dated 24th July 1875) :

Districts in which the Bengali or Umli year is current	...	12th January, 28th June.
Chittagong	...	25th May, 26th December.
Districts in which the Fusli year is current	...	12th January, 7th June.
Orissa	...	28th April, 8th November.
Darjeeling	...	12th January (including freeholds commuted grants and locations).
Hazaribagh	...	1st April.
Lohardugga	...	12th January, 7th June.
Manbhoom	...	12th January, 28th June.
Hazaribagh	...	{ 1st May.
Lohardugga	...	
Manbhoom	...	
	...	{ 1st November.

43. In case of partition of an estate being effected under Reg. XIX of 1814, or Bengal Act VII I of 1876, or any similar Act, after valuation of such estate and while such valuation remains in force, the total valuation of the original estate shall be distributed proportionately to the land-revenue under the order of the Collector over the newly-formed estates, whereupon the newly-formed estates shall, for the purposes of this Act, take the place of the original estate, the liability to pay cess in respect of each newly-formed estate being separate and distinct from the liability to pay cess in respect of any other of such newly-formed estates.

Such separate liability shall take effect from the same date as the separate liability of the newly-formed estates respectively in respect of land-revenue.

The procedure prescribed by sections 34 and 35 shall be followed whenever a redistribution of the valuation is made in consequence of a partition as mentioned in this section.

As amended by Act II. 1881, B.C.

44. (1)—When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act XI of 1859, or under section 70 of Bengal Act VII of 1876, or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of road cess and public works cess under this Act, to all the advantages of separate liability enjoyed by him under the said Act XI of 1859, and Bengal Act VII of 1876, in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of separate notices under this Act from the date on which such advantages shall take effect in respect of the demand of Government revenue.

(2)—Whenever any such separate account is opened after the valuation of an estate, and while such valuation remains in force, the Collector shall issue a notice on the

holders of the shares severally, in respect of which the accounts are to be kept separately, informing them that unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the cesses which the whole estate is liable to pay according to the existing valuation will, from the date on which such separate accounts were opened, be apportioned among such shares severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. Such notice shall specify such proportionate amount.

(3)—If no such objection be preferred within the time specified, such proportionate amount shall be the amount of the cesses for which the respective holders of such several shares are primarily liable as mentioned in section 13 of Act XI of 1859, subject however, to the general responsibility of the holders of the entire estate as mentioned in section 14 of the said Act, if the amount of the cesses due on account of any such share cannot be recovered as provided in sections 98 and 99 of this Act from the holders of such share.

(4)—If any such objection shall be preferred as aforesaid the total amount of the cesses for which the whole estate is liable according to the existing valuation shall be apportioned among the several shares in respect of which such separate accounts are opened in proportion to the annual value of such shares respectively under such rules or special instructions, not being inconsistent with this Act, as may be issued by the Board of Revenue; and the holders of such several shares shall be primarily liable as aforesaid for the payment of the amount of the cesses so apportioned on their shares respectively.

(5)—Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause 1 of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share.

Act II, 1881, B.C.

45. If any instalment of road cess or public works
 Penalty for default of cess or part thereof payable to the
 payment of instalments. Collector shall not be paid within

fifteen days from the date on which the same becomes due, the amount of such instalment or part thereof may be recovered at any time within three years after it became due, with interest at the rate of twelve and-a-half per centum per annum calculated from the date on which such instalment became due, and with all costs of recovering the same.

As amended by Act II, 1881, B.C.

46. (1)—In any district to which the Lieutenant-Governor may specially order that the provisions of this section shall be extended, it shall be lawful for the Collector to keep a separate account in respect of the amount of cesses payable and paid by any holder of a revenue-free estate who is recorded in Part I of the Collector's general register of revenue free lands as proprietor or manager of any specified share or interest in any revenue-free property.

(2)—Such separate account shall be opened and kept under such rules as to the levy of fees and other matters, and subject to such conditions and in such manner as the Board of Revenue may from time to time prescribe, and the Board of Revenue may at any time order that any separate account which has been so opened shall be closed from such time as they may direct, and no longer kept as a separate account.

(3)—As long as any separate account shall remain open as provided in the preceding clause, and no longer, the joint liability of the holders of such revenue-free estate for payment of the entire amount payable in respect of such estate shall cease; and the Collector shall recover the amount of cess or other demand due in respect of each share or interest for which an account has been so separately kept from the holder or holders of such share or interest only; and, if the Collector shall think fit to proceed under section 99, he shall take action under that section against the share or interest only in respect of which the sum demanded is due and the rents thereof.

As amended by Act II, 1881, B.C.

47. Every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and-a-half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him.

Recovery by holders of estates or tenures. A plaintiff in a suit for arrears of road and public works cess is entitled to claim and recover damages.—10 C. L. R., 223.

48. Any shareholder in an estate or tenure who may have paid the road cess or public works cess payable in respect of such estate, tenure or any part thereof in excess of the amount proportionate to his own interest in such estate or tenure, may recover from his co-sharers such sums as he may have paid on account of their respective shares and interests, in the same manner and under similar penalties, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

49. Whenever any shareholder in an estate who is recorded in the general register of revenue-paying and revenue-free lands maintained by the Collector, or whenever any shareholder in an estate the extent of whose share or interest in such estate is recorded in any other register kept up by the Collector of lands paying revenue or rent to the Collector direct, shall have paid the road cess or public works cess payable in respect of such estate, or any part thereof in excess of the amount proportionate to his own interest in such estate, he may, within fifteen days of such payment being made, move the Collector to make a certificate as provided by any law for the time being in force for the recovery of public demands, specifying the amount which has been paid in by such shareholder as cess in respect of the recorded share or interest of any other shareholder in the estate ;

and thereupon such Collector may, if he think fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand ; and the same notices shall be issued and the same proceedings may be taken thereon by the Collector as in case of such certificate ;

Provided that the person in whose favour the certificate has been made shall be deemed to be the decree-holder for the sum mentioned in the certificate; and all proceedings taken by the Collector for the recovery of the sums mentioned in the certificate shall be taken at the instance of the person in whose favour the certificate has been made and at his cost, and on his responsibility, and not otherwise;

Provided also that if any person against whom such certificate has been made shall object that the amount of the cesses for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a Civil Court as being equitably payable in respect of such person's share or interest in the estate, and if in the opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate, and leave the applicant to his remedy in the Civil Court.

CHAPTER IV.—*Valuation and Assessment of Lands held rent-free and Payment and Recovery of Cess in respect thereof.*

50. All lands held without payment of rent other than
 Rent-free lands in what estates or tenures to be included for the purposes of this Act. lands mentioned in section 33, and other than estates entered on the General Register of revenue-free lands of the district, shall, for the purposes of this Act, be deemed to form a part of any tenure within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any tenure, then to form a part of any estate within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any estate, then to form a part of the estate in which they were included at the original settlement of such estate; and if there be any doubt as to the estate in which they were so included, then to form a part of such conterminous estate as the Collector, in whose district such conterminous estate is situate, shall by an order under his seal appoint.

51. Every holder of an estate or tenure* who is required by this Act to submit a return in the

holders of estates and tenures bound to return rent-free lands, and to pay cess at half rates for such lands included therein.

form in Schedule (A) contained, shall be bound to enter in such return all lands of the nature of those specified in section 50 according to the tenor thereof; and shall be bound to pay

road cess and public works cess on the annual value of such lands at one-half of the rates fixed under this Act for the levy of such cesses respectively in the district generally for the year.

52. Whenever any lands held rent-free shall have been

Notice and extracts of valuation roll to be published by Collector in respect of such rent-free lands.

included in the return of any estate or tenure as provided in the last preceding section, the Collector shall, on publication of the valuation roll of

such estate or tenure as provided in section 35, caused to be published a notice in the form in Schedule (D) contained, to which notice shall be annexed such extracts from the valuation roll of such estate or tenure as relate to such lands.

Such publication may be lawfully made by affixing one copy of such notice and extracts at some conspicuous place in every village within which any such lands are situate,

by depositing another copy of the same at any Police-station, Registration-office or other Government office in the neighbourhood for the inspection of all concerned,

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout every such village, and shall be to the effect that such extracts have been so affixed and deposited, and that the owners and holders of such lands are required to inform themselves, by inspection of such extracts of the valuation put upon their lands, and to pay yearly to the holder of the estate or tenure in the return of which such lands are included, the cesses which shall be payable in respect of such lands under the provisions of this Act.

53. Within a reasonable time not exceeding thirty days after the issue of any process for the

Holder of rent-free land may object to valuation.

recovery of any sum due from him as cess under this Chapter, the owner, holder, or occupier of any such land

may make before the Collector an objection to the valuation of his land as entered in the valuation roll so published, and on such objection being made, the Collector shall, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of the land in the possession of such owner, holder, or occupier, and may alter such roll accordingly, and shall give notice of any such alteration to the holder of the estate or tenure to which such roll relates ;

Provided that nothing in this section shall be taken to authorize the Collector to alter any return so as to show any area of land as held rent-free which the maker of such return can show to be accounted for by him in the return as rent-paying land.

54. In the following cases, that is to say—

Notice to be published by holders of estate in certain cases. (1) whenever a new valuation or revaluation takes effect in any district or part of a district ;

(2) whenever the rate fixed for the levy of the road cess or of the public works cess in any year is changed from the rate at which such cess was levied in the preceding year ; and

(3) whenever the dates fixed by the Lieutenant-Governor under section 57 for payment of instalments of the cesses by holders of rent-free land are changed,

the holder of every estate or tenure to whom any cesses are payable in respect of lands held free of rent shall cause a notice to be published in every village in which any such lands are situate, informing all concerned of the rate which has been fixed for the levy of such cesses respectively ; and requiring every owner and holder of any such land of which the cesses are payable to the person who causes the notice to be published to pay the amount of the cesses specified in such notice as it falls due, until a similar notice of change of the amount shall be given.

Such notice shall contain the following information in respect of each tenure and holding of rent-free land which is entered separately in the Collector's valuation roll :—

(1) a specification of the land in respect of which the cesses are payable ;

(2) the name of the owner, holder or occupier of such lands, if known ;

(3) the annual value of such land as entered in the Collector's valuation roll;

(4) the rate on each rupee of the annual value which has been fixed under the Act for the levy of the road cess and public works cess respectively for the year;

(5) the amount of the cesses payable in respect of each tenure or holding, calculated at such rates; and

(6) the dates fixed by the Lieutenant-Governor under section 57 for the payment of each instalment together with the amount of each instalment.

55. Publication of the notice abovementioned may be lawfully made by affixing one copy of the same at some conspicuous place in every village in which any such land is situate;

by depositing another copy thereof to be available for general inspection at any mâl cutcherry

of the estate or tenure in which such land is included,

or at any other convenient place in the neighbourhood;

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout such village, and shall be to the effect that such notice has been so affixed and so deposited, that it is open to inspection at the mâl cutcherry or other convenient place as abovementioned, and that every owner and holder of rent-free land is required to inform himself of the contents of such notice and to pay the amount of the cesses due by him accordingly.

56. After publication of the extracts from the roll as

Owner of rent-free land bound to pay cess at full rate.

provided in section 52, and in cases in which publication of the notice mentioned in section 54 is required, after publication of such notice, and

not otherwise, every owner and holder of any rent-free land included in such extracts and every person in receipt of the rents and profits or in possession and enjoyment of such land shall be bound to pay year by year to the holder of the estate or tenure in the return of which such land has been included, the amount of the road cess and public works cess which may thereafter become due to such holder, calculated on the annual value of such land as entered in such extracts, or on any other annual value which may have been determined by the Collector under

section 53, at the full rate or rates which may have been fixed under this Act for the levy of such cesses respectively in the district generally for the year.

57. The payment of the cesses for each year by the holder of any land which is held rent-free shall be made by two equal instalments, or in one payment, upon such days or day as shall be for that purpose fixed by the Lieutenant-Governor.

Instalments to be fixed by Lieutenant-Governor.

Under s. 57 of the Act, the following latest dates have been fixed for the payment to the holder of the estates or tenure (in the return of which such land has been included) of the cesses on land for which no rent is payable (*vide* Government Order, No. 1827, dated 24th July 1875).

Districts in which the Bengali or

Umli year is current	...	1st May, 1st November.
Chittagong	...	1st April, 1st November.

Districts in which the Fusli year is

current	...	1st May, 1st November.
Orissa	...	1st April, 1st October.

58. When an instalment of the cesses due on any rent-free land is not paid to the holder of the estate or tenure to whom it is due within one month of the date on which such instalment is payable, such holder shall be entitled to recover a sum equal to double the amount of such instalment due to him under sections 56 and 57, with interest on such sum calculated at the rate of twelve and-a-half per centum per annum from the date on which such instalment was payable, and with all costs of suit;

Provided that such holder shall have paid to the Collector all sums due to such Collector up to date in respect of road cess and public works cess, and not otherwise.

59. If the holder of any estate or tenure shall have omitted to enter in his return (whether such return was made under Bengal Act X of 1871, or under this Act) any rent-free land which he was bound to enter in such return, such holder may at any time after the passing of this Act give in to the Collector a supplementary return showing the

Holders of estates, &c., may send in supplementary returns in respect of rent-free lands.

necessary particulars in respect of the land so omitted in the form given in Part IV of Schedule A, and shall thereupon pay to the Collector the amount of the cesses which would have been payable by him to such Collector in respect of such land for the three years next preceding, or for any shorter period which may have elapsed since the estate or tenure was last valued.

60. Such supplementary return shall to all intents and purposes have the same effect as a return duly made under the provisions of section 51; and sections 51 to 56 (both inclusive) shall be applicable to and in respect of any rent-free land included in such supplementary return.

61. The provisions of sections 57 and 58 shall be applicable to every amount which, as provided in section 56, may become payable by the owner and holder of any such rent-free land to the holder of any such estate or tenure after the fulfilment of the requirements in sections 52, 53, and 54 contained.

62. The provisions of section 58 shall not be applicable to any such amount which may have become so payable under the provisions of Bengal Act X of 1871 or of this Act before the fulfilment of the requirements of the sections 52, 53, and 54; but when any instalment of cess which may have become payable before the fulfilment of such requirements has not been paid to the holder of such estate or tenure on the date on which such instalment was payable, the holder of such estate or tenure may recover the amount of such instalment, together with interest at the rate of twelve and-a-half per centum per annum on such amount, and with all costs of suit;

Provided that no holder of an estate or tenure shall recover any amount under the provisions of this section, unless he has paid to the Collector all sums which became payable by him to such Collector on account of road cess and public works cess, at any date within the year in which the amount sought to be recovered became payable to such holder of an estate or tenure.

63. As soon as the said requirements shall have been fulfilled in respect of any such land which is included in any such supplementary return, every owner and holder of such land and every person in receipt of the rents and profits, or in possession and enjoyment of such land, shall be bound to pay the amount of the road cess and public works cess which may thereafter become due on such land to the holder of the estate or tenure, in the supplementary return of which such land has been included. Sections 56 and 57 and 58 shall be applicable to the cesses so payable.

64. (1)—Every holder of an estate or tenure who has included any rent-free lands in any return made to the Collector in respect

Additional return of rent-free land entered

of 1871 may be made.

provisions of the Bengal Act X of 1871, and has paid to the Collector any cess payable under the said Act, or under the Bengal Act II of 1877, in respect of the said rent-free lands, may at any time after the commencement of this Act give in to such Collector an additional return in the form given in Part IV of Schedule (A).

(2)—Such additional return shall be deemed to be a supplementary return within the meaning of section 59, and from the date of the inclusion of any such lands in such additional return, the same consequences shall ensue, and the same rights and obligations accrue to the Collector and to the holder of such estate or tenure, and the same liabilities shall attach to the owner, holder and occupier of such lands as would have attached to them respectively if such lands had been included in a supplementary return given in under section 59.

65. Whenever any occupier of land which is held rent-free by the owner thereof shall have paid any sum as cess due in respect of such land to any holder of an estate or tenure to whom such cess is payable, such occupier shall be entitled to deduct the sum so paid by him from the rent next thereafter payable by him to the owner of such land, until such sum is fully adjusted.

Occupier may deduct cess paid from rent.

66. Notwithstanding anything in this Chapter contained, the Collector may at any time

Notice to be served on holder of rent-free land requiring him to lodge return.

cause a notice as mentioned in section 16 to be served on the holder of any rent-free land which he shall consider not to have been entered in the return

of any estate or tenure in which such land ought to have been included under the provisions of section 51. Such notice shall require the holder of such land to lodge at the office of the said Collector a return in the form in Schedule (A) contained in respect of such land ;

and on service of such notice, the provisions of this Chapter shall no longer apply to such lands ; but the same consequences shall ensue, and the same liabilities shall attach to the holder of such land as would have ensued and would have attached if such lands had constituted a revenue-free estate.

If the Collector has reason to believe that any land in respect of which he determines to serve such notice has been included in the return of any estate or tenure, he shall give notice of his intention to the holder of such estate or tenure, and shall alter such return as may be requisite, and shall correct the valuation and assessment of such estate or tenure as may be required.

67. If within one year of the commencement of this

If no notice served, such holder bound to notify omission to Collector.

Act no notice has been served as mentioned in section 66 on the holder of any rent-free land requiring him to lodge a return in the office of the Collector, and if such land has not

been included in any extracts from the returns of estates and tenures published by the Collector under section 52 or other similar section, the holder of such rent-free land shall be bound within one month of the expiration of such year to give information of such omission to the Collector, together with a description of the said land, a specification of the village or villages within which it is situate, the area in each village, and the amount of rent payable to him thereupon ;

Provided that no holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise than after the issue of any

notice by the Collector in respect of his lands give such information to the Collector shall be liable to prosecution for omitting to give such information within the prescribed time.

68. On receipt of such information whether within the time prescribed or after the expiration thereof, the Collector may, by an order in writing, require such owner or holder to make a return of his land in the form in Schedule (A) contained, or if the gross rental of such land does not exceed one hundred rupees, may order that such land shall be summarily valued under section 27 or section 28, and may proceed to make such valuation.

69. Every order made by a Collector under the last preceding section shall have the same effect and be followed by the same consequences as the issue of a notice by the Collector under section 66.

70. As soon as any rent-free land which had not previously been included in the valuation of any estate or tenure, has been valued by the Collector after the issue of a notice as provided in section 66, or after an order made under section 68, the holder of such land shall become liable to pay to the Collector the road cess and the public works cess due on such land, in accordance with such valuation, for the three years last preceding such valuation, at the full rates at which such cesses were respectively levied for each such year in the district generally, together with interest calculated at twelve and-a-half per centum per annum on each instalment from the date on which such instalment would have been payable if such valuation had been in force.

71. No owner or holder of rent-free land on whom a notice has been served by the Collector under section 66, or in respect of whose land an order has been made by the Collector under section 68, shall

liable to have the land to which such notice or order refers included in any return of an estate or tenure, or to pay any amount as road cess or public works cess otherwise than to the Collector or to some person appointed by

him in that behalf, unless, on a revaluation of any estate or tenure being made, the Collector shall by an order in writing direct that for the future such land shall be included within such estate or tenure for the purposes of this Act ;

and upon such order being made, the provisions of this Chapter, in so far as they are applicable, shall apply to the assessment and payment of road cess and public works cess in respect of such land.

CHAPTER V.—*Valuation, Assessment, and Levy of Cesses on Mines, Railways, and other Immoveable Property.*

72. On the commencement of this Act in any district, and thereafter before the close of each year, the Collector of the district shall cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway, and other immoveable property not included within the provisions of Chapter II, and not being one of the tramways or railways mentioned in section 8 ; such notice shall be in the form in Schedule (F) contained, and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months a return of the net annual profits of such property, calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.

Such Collector may in his discretion extend the time allowed for lodging such return.

73. Whenever any property assessable under this Chapter lies in two or more districts, the notice to furnish a return under section 72 shall be served on the owner, chief agent, manager or occupier of such property by or through the Collector of the district in which such owner, chief agent, manager or occupier may reside or have his chief place of business, and one return for the whole of such property shall suffice.

74. Whenever any property assessable under this Chapter lies partly within and partly outside the territories administered by the Lieutenant-Governor of Bengal,

the return furnished as required by section 72 shall state the total annual net profits calculated as aforesaid accruing from such property, and also the proportion of such profits which may reasonably be calculated to accrue in the territories administered by the Lieutenant-Governor of Bengal.

75. If such return be not furnished within the period of two months from the date on which such notice was served, or within any extended time allowed by the Collector of the district, or if such Collector shall deem that any return made in pursuance of such notice is untrue or incorrect, such Collector shall proceed to ascertain and determine by such ways or means as to him shall seem expedient the annual net profits of such property calculated as aforesaid.

76. If such Collector be unable to ascertain the annual net profits as aforesaid of any property assessable under this Chapter, he may, by such ways or means as to him shall seem expedient, ascertain and determine the value of such property, and shall thereupon determine six per centum on such value to be the annual net profits thereon.

77. The expenses incurred in making any valuation under section 75 or section 76 may be recovered together with all costs of the recovery thereof as provided in section 98 from the person who was bound to make such return or who made the incorrect return.

78. So soon as such Collector shall have ascertained and determined the annual net profits as aforesaid of any such property, he shall cause to be served upon the owner, chief agent, manager or occupier of such property a notice informing him of the amount of the annual net profits so ascertained and determined by him.

79. New valuations under this Chapter shall be made by the Collector of the district every year, and such Collector may for that purpose cause such notices to be issued and served, and such returns to be made, and shall have such powers and authorities as are in this Part mentioned and conferred.

Provided that whenever any return made under section 72 shall be accepted by the Collector for any year, the owner, chief agent, manager or occupier of such property may, if he see fit, declare in writing at the time of such acceptance that the annual net profits set forth in such return may, for the purposes of this Act, be deemed to be the annual net profits for each of the five years then next ensuing ;

And if the Collector of the district shall agree to accept such declaration, no new valuation shall be made of such property until the said five years shall have expired.

80. When the rate of road cess and public works cess to be levied in the district upon property assessable under this Chapter shall have been determined for any year as in this Act provided, the Collector of the district shall cause to be served on the owner, chief agent, manager or occupier of every such property a notice showing the amount of road cess and public works cess respectively payable in respect of such property, and specifying the date from which such cesses shall take effect. And such amount shall be payable by such owner, chief agent, manager or occupier to such Collector in two equal instalments—the first on the expiry of six months, the second on the expiry of nine months, after the date fixed as hereinbefore provided for the commencement of the year.

81. In any case in which the occupier of such property is a different person from the owner, and has paid in excess of half of the sum due as road cess and public works cess on account of any instalment, such occupier shall be entitled to deduct the amount of such excess from the next and subsequent instalments of rent payable in respect of such property ; and every owner who has paid in excess of half of such sum due shall be entitled to recover the amount of such excess from the occupier, provided that in no case shall an occupier deduct from his annual rent more than half of the rate of the road cess and public works cess on every rupee thereof.

82. The total of the cesses payable in respect of property assessable under this Chapter, owned or occupied by the same person in two or more districts, shall be payable to the Collector of the district where the owner, chief agent, manager or occupier may reside or have his chief place of business, and shall be by him transmitted to the Collectors of other districts in the proportion in which the Committees of such district shall be severally entitled thereto, as provided in the section next following.

How distributed when property in different districts.

83. Whenever any property assessable under this Chapter lies in two or more districts, the Lieutenant-Governor shall from time to time determine out of the total annual net profits stated in the return, or in the valuation of such profits accruing in the territories subject to him, and ascertained in any manner as aforesaid, the proportions in which such property shall be assessed in each of the said districts respectively, and the proportion of the road cess due thereon which shall be assigned to the Committee of each district concerned.

Determination of proportion of profits when property in different districts.

84. Every notice under this Chapter may be served—

Service of notices under this Chapter.

(a) by leaving it at the registered office (if any) of such owner, chief agent, manager or occupier aforesaid; or

(b) by sending it by post in a letter addressed to such owner, chief agent, manager or occupier at his office, or, if he have more offices than one, at his principal office; or

(c) by giving it to such owner, chief agent, manager or occupier.

CHAPTER VI.—*Special provisions for Orissa and Midnapore.*

85. In any district of the province of Orissa and in the district of Midnapore, the Collector may at any time, with the sanction of the Commissioner, order that any revenue-free estate not exceeding 500 standard bighas in extent, of which the valuation shall have been com-

Collectors in Orissa and Midnapore may order certain revenue-free estates to be annexed to other estates for purposes of payment of cess.

pleted, shall, for the purpose of payment and levy of the cesses due in respect thereof, be annexed to any other estate within the ambit of which it is situate or which it adjoins.

86. Notice of such order shall be given by the Collector to the holder of the estate to which such revenue-free estate is ordered to be so annexed, and to such notice shall be appended a copy of the valuation-roll of the said revenue-free estate, and thereupon such holder shall be liable to pay annually to the Collector on account of such revenue-free estate road cess and public works cess at one-half of the rates which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

87. Notice of such order shall also be given by the Collector to the holder of the said revenue-free estate, and such notice shall require him to pay annually, and he shall thereupon be bound to pay to the holder of such other estate, road cess and public works cess at the full rates which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

88. Such cesses shall be so payable by the holder of the said revenue-free estates in two equal instalments on such dates as may be fixed by the Lieutenant-Governor under section 42 for the payment of cess by the holders of revenue-free estates, or in such other instalments and on such other dates as the Lieutenant-Governor may direct, or, if the Lieutenant-Governor shall so order, the whole amount so payable on account of such cesses for each year shall be payable in a single sum on any such date as the Lieutenant-Governor may appoint.

In default of payment as hereby required, the provisions of section 47 shall be applicable.

89. Whenever the service of a notice on the holder of a revenue-free estate is required by the provisions of section 40, the Collector shall cause such notice to be served notwithstanding that the revenue-free estate may have been annexed to another estate as hereinbefore provided ;

and the Collector shall further cause a notice containing the same particulars to be served in respect of such revenue-free estate on the holder of the other estate to which it is under the provisions of section 85 annexed.

90. The Collector may at any time, with the sanction of the Commissioner, revoke any order passed under section 85, and shall give notice of such revocation both to the holder of the revenue-free estate affected, and to the holder of the other estate to which such revenue-free estate was annexed.

CHAPTER VII.—*Miscellaneous.*

91. The Collector, with the sanction of the Board of Revenue, may appoint such establishments as may be required for making valuations and revaluations under this Act, for making collections, recovering arrears, keeping accounts connected therewith, and generally for all purposes connected with such valuations, revaluations, collections, and recoveries, and other purposes of this Act, and may incur such other expenses as are requisite for such purposes ;

and the payment of such establishments and other charges on bills signed by the Collector shall be the first charge on the District Road Fund.

92. For the purpose of making any valuation of lands directed by this Part, the Collector shall exercise the powers vested in Collectors by clause 1 of section 23, and clause 1 of section 24 of Reg. VII of 1822, except so far as the said clauses authorize any enquiry into rights or interests attaching to such lands.

93. Every valuation under this Part shall be open to revision by the Commissioner or Board of Revenue and not otherwise.

94. Any person who is bound to make any return under this Part shall be deemed to be legally bound to give notice and to furnish information to a public servant in respect of the same. If the Collector shall see ground for believing that any return

made is false, he may prosecute the maker accordingly. And if the person so prosecuted is convicted, the Collector may proceed to make a valuation of the lands mentioned in such return by such ways and means as to him shall seem expedient.

95. Every return filed by or on behalf of any person in pursuance of the provisions of this Part, shall bear the signature and address of such person, or his authorized agent, and shall be admissible in evidence against such person, but shall not be admissible in his favour.

96. Every notice under this Part required to be served, except as otherwise expressly provided, may be served—

(1) by delivering the same to the person to whom it is directed, or on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to any agent authorized to appear generally for the person to whom such notice is directed ; or

(2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to reside ; or

(3) by posting a copy of the notice at the māl cutcherry of the estate or tenure to which the notice relates, or if no such māl cutcherry be found, on some conspicuous place on such estate or tenure : and, in the case of estates paying their annual revenue by four instalments, by delivering another copy thereof to the agent who shall have paid an instalment of revenue next after the preparation of such notice. In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

97. The costs of service of every notice and process by this Act required to be served shall in the first instance be defrayed from the District Road Fund, and, subject to such rules as may be made by the Board of Revenue under section 106, shall be recoverable either from the person to whom such notice or process is addressed, or from the person owing to whose default such notice or process is issued, as the Collector may think fit ;

and every such amount shall be deemed to be due to the Collector, but when levied by the Collector shall be credited to the District Road Fund ;

Provided that no costs or other expenses whatever shall be recovered from any person in respect of the publication or issue of any proclamation or notice calling for any return, or giving intimation of any amount payable by any person as cess under this Act other than notices of demand to pay any amount of cess which has become due.

98. Every amount due, or which may become due, to any Collector under the provisions of this Act in respect of any arrears of cess, of any expenses incurred, of any fee or costs payable, of any notices served, of any fines imposed, or on any other account, may be realized by such Collector by any process provided by any law for the time being in force for the realization of public demands ; and shall be deemed to be a public demand under such law ;

Provided that the District Road Committee shall indemnify the Collector of the district for all expenses incurred, and for all costs and damages for which such Collector may become liable (whether in connection with suits before the Civil Courts or otherwise) in respect of any proceedings for the recovery of any such dues as aforesaid.

99. Instead of proceeding as provided by the last preceding section for the recovery of any sum due under this Act, or if after so proceeding the Collector shall have failed to find property belonging to the person from whom any such sum is due by the sale of which such sum may be fully recovered, the Collector may, if he see fit, after recording his opinion to that effect, cause a notification in form in Schedule (F) contained to be issued for the estate or tenure in respect of which any such amount is due. Such notification shall be published by beat of drum in every village containing any land to which such notification relates, and a copy thereof shall be posted in a conspicuous place in every such village and at the mâl cutcherry of the estate or tenure to which such notification relates, if such cutcherry be found.

Every payment of rent, save and except to the Collector

or some person by him thereunto appointed, made after such publication until further order from the Collector, shall be null and void ;

and the Collector may recover, by any process of law for the time being in force, by which he might recover rent due to the Government from a tenant in an estate which is managed directly by the Collector, the rent then or thereafter to become due from any occupier, tenure-holder, under-tenant or ryot on the estate or tenure in respect of which the notification has been issued, until the amount due to the Collector, together with all costs, shall be satisfied, whereupon the said notification shall be revoked.

The receipt of the Collector in respect of all sums paid to him as rent or so recovered shall be, to the extent of such sums, a valid discharge in respect of rent due by the occupier, tenure-holder, under-tenant or ryot to whom such receipt is given.

In case the Collector shall see fit so to proceed, the claim Collector's claim to for arrears of road cess and public have priority. works cess due from any estate or tenure in respect of which a notification has been issued as above provided, shall have priority over any other demand or claim or lien existing thereupon other than the demand of Government revenue.

100. The Lieutenant-Governor may at any time invest any person with the powers of a Collector under this Part to be exercised by such person under the control or supervision of the Collector, or independently of such control and supervision, as the Lieutenant-Governor shall direct.

101. The Collector may, with the sanction of the Commissioner, delegate all or any of his gate powers. powers and functions under this Part to be exercised, under the control and supervision of the Collector, by any Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer of like rank ;

Provided that every order passed by such Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer, shall be appealable to the Collector within fifteen days of such order being passed.

102. Every person who shall deem himself to be aggrieved by any valuation made by a Collector under the provisions of section 75 or 76 may, within one month after the issue of the notice mentioned in section 78,

• Appeals against valuation.

and every person who shall deem himself to be aggrieved by any valuation made by the Collector under the provisions of any other section of this Part, may, within one month after the posting up of a copy of the valuation-roll as mentioned in section 35,

prefer his objections to the Collector, and if such objections, or any of them, are disallowed, may, within one month of such disallowance, appeal to the Commissioner against such valuation, and the decision of the Commissioner shall be final.

103. Every order for the levy of a fine or of expenses passed by a Collector under this Act shall be appealable to the Commissioner within one month from the service of the first process for the levy of such fine or expenses. Except as otherwise provided in section 18, pending such appeal, and until the order of the Commissioner which shall be final, all process for such levy shall be discontinued.

Orders for levy of fine appealable.

104. Every order passed by the Collector under section 19, 20, 26, 50, 51, 53, 85, 98, or 99 shall be appealable to the Commissioner within one month from the date of such order.

Orders appealable to Commissioner.

105. Notwithstanding anything hereinbefore contained, all proceedings of the Collector or of any officer of a lower grade under this Part shall be subject to the general control and supervision of the Commissioner and of the Board of Revenue, and all such proceedings of the Commissioner shall be subject to the general control and supervision of the Board of Revenue.

Collector's proceedings subject to supervision of Commissioner and Board.

106. The Board of Revenue may from time to time make, and, when made, from time to time alter, add to, or cancel any rules—

Board may make rules.

(a) prescribing forms for the notices, returns, and valuation-rolls required by this Part to be issued or made;

(b) prescribing the amounts which shall be levied in respect of the issue of each notice and process under this Part, and regulating the recovery thereof under section 97;

(c) prescribing the amount of copying-fee to be levied in respect of supplying extracts and copies of returns and valuation-rolls as provided in section 34;

(d) apportioning the amount of the cesses for the payment of which the respective holders of the several shares of an estate in respect of which separate accounts are kept shall be primarily liable under section 44;

(e) regulating the opening, keeping, and closing of separate accounts in respect of amounts of cess payable by recorded shareholders in revenue-free estates as provided in section 46;

(f) regulating the proceedings of Collectors under Chapter V; and otherwise providing for the proper execution of this Act in respect of valuations of the assessment and of the levy of the cesses and other sums due under the same.

107. Nothing in this Part contained, and nothing done

<p>All rights in immoveable property saved unless affected by this Act.</p>	<p>in accordance with this Act, shall be deemed to affect the rights of any person in respect of any immoveable property or of any interest therein except as otherwise expressly provided in this Act.</p>
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PART III.

CONSTITUTION AND ADMINISTRATION OF THE DISTRICT ROAD FUND.

CHAPTER VIII.—*Constitution and Application of the District Road Fund.*

108. The District Road Fund of every district under Constitution of District Road Fund. this Act shall consist of the amount produced by the road cess,

of all sums levied or recovered as fines, penalties or otherwise in respect of the cesses under this Act, not being interest levied in respect of public works cess,

of all sums assigned by the Government thereto, whether as a contribution from the proceeds of the public works cess towards the expenses of assessing and collecting such cess jointly with the road cess or otherwise, and

of all sums whatsoever which may be at the disposal of the District Road Committee as hereinafter appointed.

As amended by Act II, 1881, B.C.

109. The District Road Fund of every district shall be applicable to the following objects and in the following order :—

Firstly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector as mentioned in section 91 ;

to the indemnification of the Collector with the sanction of the Commissioner for any other costs or damages which he may have incurred, or for which he may have become liable in the course of the proceedings for the assessment and collection of the cesses under this Act ;

and to the payment of such sums as may be determined by the Lieutenant-Governor for the purposes mentioned in section 181, subject to the limit imposed in that section :

Secondly.—To the payment of establishments entertained and expenses incurred by the District Road Committee for the purposes of this Act, and of any leave allowances, gratuities or pensions which may be payable under this Act :

Thirdly.—To the payment of any sums which the Committee may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between the district and adjacent districts ;

Fourthly.—To the repair and maintenance of roads, bridges, water-channels, and other means and appliances for facilitating communications which have been taken charge of by the Committee under this Act, or towards which they may have agreed to contribute ;

Fifthly.—To the construction of new roads, bridges, water-channels, and other means of communication ;

to the construction, provision, repair, and maintenance of any means and appliances for facilitating communication within the district or between the district and adjacent

districts which the Committee may determine to construct or to take charge of, or towards which they may determine to contribute ;

to the planting of trees by the roadside ; and

to the construction and maintenance of any means and appliances for improving the supply of drinking-water, or for providing or improving drainage ; and

Sixthly.—To investment in any local debenture loans issued by the Government of India or the Lieutenant-Governor for the construction of productive works, which may directly improve the means of communication within the district, or between the district and adjacent districts ;

Provided—

(1)—that no sum shall be expended from the District Road Fund in the construction of any channel for the purposes of irrigation,

or for the purposes of drainage connected with any irrigation works in charge of public officers,

or for the improvement or maintenance of any water-channel on which tolls are levied, when the proceeds of such tolls are not paid into the District Road Fund ;

(2)—that no part of the District Road Fund of any district shall be applied to the construction or maintenance of any road within any first or second class municipality under the Bengal Municipal Act, 1876, unless such road shall have been expressly excluded from the operation of the said Act under section 32 thereof ; and

(3)—that no part of the District Road Fund of any district shall be expended on any work or for any purpose without the limits of such district, unless the special sanction of the Lieutenant-Governor to such expenditure shall have been obtained, as being for the benefit of the district charged.

A public road includes a fair margin on either side of the road which may be used for various purposes in connection with the road itself.

Where trees have been planted on the margin of a public road, a suit will not lie by the proprietor of the land through which the road passes to have them removed.—7 C. L. R., 272.

110. With the sanction of the Lieutenant-Governor, the Committee may from time to time undertake to guarantee the annual payment from the District Road Fund of such sums as they shall think fit

Committee may guarantee sums for District Road Fund as interest on capital.

as interest on capital expended on any works which may directly improve the means of communication within the district, or between the district and other districts.

111. Whenever any works to which any portion of the Road Fund of any district is applicable under the last preceding section extend over more than one district, the Lieutenant-Governor may decide the proportions in which the Road Fund of each district concerned shall contribute towards the cost or interest upon the cost of such works.

CHAPTER IX.—*The District Road Committee.*

112. For the administration of the District Road Fund, and for the construction, repair, and maintenance of district roads, bridges, water-channels, and other works as aforesaid under this Act, the Lieutenant-Governor shall from time to time appoint, or cause to be elected, under such rules in regard to qualification, election, and discharge, as may by him be prescribed, any number of the payers of road cess of such district, their managers or agents to be members of a District Road Committee.

113. Every member of the Committee may hold office for five years from the date of his appointment or election, and the Lieutenant-Governor may at any time before the expiration of such term of five years accept the resignation of such member.

Members may hold office for five years.

Resignation of member.

114. The Lieutenant-Governor may remove any member appointed or elected under this Act, if such member shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct.

Member who neglects to attend meetings, or is sentenced to imprisonment, to cease to be member.

115. Any member who, without having obtained permission from the Committee, shall have omitted to attend six consecutive meetings of the Committee,

and any member who shall have been sentenced to imprisonment,

shall cease to be a member of the Committee.

116. In addition to the members appointed or elected as aforesaid, the Lieutenant-Governor may appoint any officer of Government to be a member of the Committee, and may direct, by a writing signed by him, that all persons holding the offices in such writing specified shall be *ex-officio* members of the Committee for any district in which they exercise the said offices, and in which this Act shall have come into force;

Appointment of *ex-officio* members.

Provided that the number of members of the Committee holding salaried offices under the Government shall not be more than one-third of the total number of the Committee.

Members holding salaried offices under Government not to exceed one-third.

117. No act or proceedings of the Committee shall be invalidated by reason that, at the time of doing such act or taking such proceedings, the number of members of the Committee as then existing, who were holding salaried offices under the Government, was greater than the proportion mentioned in the last preceding section; and no act or proceedings of any meeting shall be invalidated by reason of the proportion of members holding such salaried offices as aforesaid present at the same being greater than as provided by the said section.

Proceedings not to be invalidated by reason of excessive proportion of officials.

Their Mode of transacting Business.

118. The Collector of the district shall be the Chairman of the Committee, and the Vice-Chairman shall be appointed as provided in section 129.

Chairman and Vice-Chairman of Committee.

119. The Committee shall have an office within the district in and for which they shall have been appointed, and shall meet for the transaction of business at least once in every quarter of a year.

Committee to have an office.

120. There shall be two kinds of meetings for the transaction of business, namely, special meetings and ordinary meetings.

Two kinds of meetings.

What are special meetings.

121. Meetings of the following descriptions shall be special meetings :—

- (1) Any meeting convened by the Chairman under section 123 ;
- (2) For the election of a Vice-Chairman under section 129 ;
- (3) For determining the salary of the Engineer under section 131 ;
- (4) For the election of an Engineer under section 132 ;
- (5) For determining the details of establishment, and the salaries to be attached to each office under section 133 ;
- (6) For making rules for leave of absence under section 134, and for pensions and gratuities under section 138 ;
- (7) For considering and passing the general statement under section 141, or any revised or supplemental statement under section 143 ;
- (8) For preparing and framing an estimate of income and expenditure, and for determining the rate of road cess for the coming year under sections 146 and 148 ;
- (9) For amending any such estimate under section 157 ;
- (10) For receiving and considering the annual report and accounts under section 179.

All other meetings shall be ordinary meetings.

122. The Chairman, or, in case of his absence at the time appointed for the meeting, the President at meetings. Vice-Chairman, shall preside at every meeting of the Committee. In the absence of both the Chairman or Vice-Chairman, the members present may choose one of their number to be President of such meeting.

123. The Chairman, or, in case of his absence, the Vice-Chairman, may, whenever he thinks fit, and shall, upon a requisition made in writing and signed by not less than one-third of the members, convene a meeting.

Meeting to be called on requisition.

124. At least ten days' notice shall be given of every meeting. Every notice shall state the business to be transacted at the meeting proposed to be called ; and no business other than that so stated shall be transacted at such meeting, except with the permission of the meeting.

Notice of meeting.

125. (1)—No business shall be transacted at any special meeting unless at least one-fourth of the total number of members forming the Committee at the time of the meeting are present at the commencement and close of such business; and no business shall be transacted at an ordinary meeting unless at least three members are so present.

Quorum.

(2)—The Committee may delegate any of their powers to Sub-Committees consisting of such member or members of their body as they think fit. Any Sub-Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Committee.

Delegation of powers to Sub-Committee.

(3)—The Committee may hold meetings and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of a equal division of votes, the President shall have a second or casting vote.

Adjournment, voting, &c., of Committee.

126. If at the time appointed for a special meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned till some future day to be appointed by the Chairman or Vice-Chairman of the Committee, and ten days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Adjourned meeting.

127. The minutes of the proceedings of every meeting shall be recorded in a book to be kept for that purpose in the office of the Committee, and any person resident in, or owing or holding land in the district may at all reasonable times inspect and examine such book without payment of any fee, and may obtain a certified copy of any extract therefrom on payment of such fees as the Lieutenant-Governor may direct.

Minute-book to be kept.

At the request of any member of the Committee who is not acquainted with the English language, the Chairman shall cause to be delivered to such member an abstract of the minutes of any meeting in the vernacular of the district.

128. All correspondence between the Committee and the Lieutenant-Governor shall pass through the office of the Commissioner, who in all things under this Part shall be subject to the control and supervision of the Lieutenant-Governor.

The Committee shall furnish the Lieutenant-Governor and the Commissioner respectively with any information for which they may call connected with the duties imposed upon them by this Act.

Their Vice-Chairman, Engineer, and Establishment.

129. The first meeting of the Committee shall be convened by the Chairman at such time as he shall think fit, and shall proceed to nominate one of the members of the Committee to be Vice-Chairman of the Committee, and shall submit to the Lieutenant-Governor the name of the person so nominated; whereupon the Lieutenant-Governor may, if he think fit, appoint such person to be Vice-Chairman of the Committee, or may require the Committee to nominate and to submit to him the name of some other person, and whenever the office of Vice-Chairman shall be vacant, a Vice-Chairman shall be nominated and appointed in the manner abovementioned;

Provided that whenever the office of Vice-Chairman shall become vacant, the Chairman may, with the approval of the Commissioner, appoint any member of the Committee to be Vice-Chairman thereof *ad interim* until the vacancy shall have been filled up by appointment as above provided.

The Vice-Chairman may hold office for a period not exceeding two years, and at the expiration of that time may be renominated by the Committee and re-appointed to the office by the Lieutenant-Governor.

130. The Lieutenant-Governor may, if he think fit, upon the recommendation of two-thirds of the members voting at any special meeting, remove the Vice-Chairman.

Chairman, and any member entitled to vote may give a proxy in writing to any other member for the above purpose.

Such proxy shall be produced at the time of voting, and shall entitle the member to whom it is given to vote as authorized by the tenor of such proxy.

Proxies allowed.

131. The Committee at a special meeting shall determine the salary which they are prepared to give to the District Engineer, and shall report the same to the Lieutenant-Governor, who may approve of such salary, or require the Committee to increase or to reduce the same. In determining such salary regard shall be had in each district to the character of the works and the nature of the duties required therein. The salary so determined and approved may from time to time be altered by the Committee with the approval of the Lieutenant-Governor.

Salary of District Engineer.

132. (1)—Whenever the office of District Engineer shall be vacant, the Committee shall represent the occurrence of such vacancy to the Lieutenant Governor who shall thereupon cause a list of qualified officers not being less than three in number to be laid before the Committee, and the Committee shall proceed to elect a District Engineer from the persons named in such list.

Appointment of Engineer.

(2)—All appointments of District Engineers existing at the time of the commencement of this Act shall hold good for a period not exceeding two years from such commencement, and on the expiration of such time every office of District Engineer to which the last appointment shall have been made before the commencement of this Act shall be deemed to be vacant, and a District Engineer shall be appointed in manner above prescribed.

Existing appointments to hold good for two years only.

Provided that if the Lieutenant-Governor and the Committee are satisfied that no change is required, any person holding the appointment of District Engineer at the time of the commencement of this Act may, with the sanction of the Lieutenant-Governor, be re-appointed by the Committee to be District Engineer.

Engineer may be suspended or dismissed by Lieutenant-Governor.

(3)—The District Engineer may be suspended, removed or dismissed from his office by the Lieutenant-Governor.

133. The Committee, subject to the limit of cost imposed by section 135, may, with the sanction of the Commissioner, determine, and from time to time alter, the details of the establishment of officers (other than the District Engineer), clerks, and servants to be employed by them or by any Branch Committee as hereinafter appointed, and the salary to be paid to each such officer, clerk or servant; provided that no salary exceeding Rs. 200 a month shall be attached to any office without the express sanction of the Lieutenant-Governor.

Appointments to offices on the establishment so determined shall be made as follows:—To every office of which the salary does not exceed Rs. 50 per mensem, by the Chairman of the Committee or of the Branch Committee, as the case may be;

To every office of which the salary exceeds such amount, by the Committee or the Branch Committee, as the case may be, with the approval of the Commissioner.

Any such officer, clerk or servant as aforesaid may be suspended or dismissed by the authority appointing him, subject to an appeal to the Commissioner, whose decision shall be final.

134. The Committee shall make such rules as to leave of absence and absentee allowances as they from time to time may think fit for their own officers and servants, as well as for those of any Branch Committee;

Provided that in the case of District Engineers drawing a salary of Rs. 200 or upwards per mensem, leave of absence on medical certificate may be granted by the Lieutenant-Governor in accordance with the rules contained in Supplement F of the Civil Leave Code, or any other rules for the time being in force for uncovenanted officers of Government, and that no other leave of absence shall be granted to a District Engineer by the Committee without sanction of the Lieutenant-Governor.

135. The aggregate salaries and absentee allowances of the engineers, officers, clerks, and servants aforesaid, entertained by any District Road Committee and by all Branch Committees in any district, together with the expenses of the Collector's establishments under section 91 and the amount which such District Road Committee is required to pay under section 181 shall not, for any one year, without the express sanction of the Lieutenant-Governor, exceed one-fourth of the income of the Committee for the said year exclusive of the balance of the previous year.

136. The Lieutenant-Governor may, on the application of two-thirds of the Committees in any Division, appoint a Divisional Superintendent of Works, with the necessary office establishment, for the control and supervision of the executive works establishment in all districts of such Division, and may determine the proportion of the cost payable by each district in the Division in respect of the same.

137. The Lieutenant-Governor may, on the application of any number of districts, whether forming part of the same Division or otherwise, appoint a Superintendent of Works and establishment as aforesaid for such districts, and determine the proportion of the cost payable by each such district in respect of the same.

138. The Committee may, with the approval of the Lieutenant-Governor, make rules for pensions and gratuities to be granted and paid out of the District Road Fund to their officers and servants, and to those of any Branch Committee, and to the members of any establishment appointed by the Collector of the district under section 91, and may, from time to time, with such approval, repeal, alter or add to such rules.

Provided that no officer shall be entitled to any pension or gratuity under this Act from the Road Fund of any district in respect of any period during which he was not serving under the Committee of such district, or under the Collector of such district on an establishment entertained under section 91 for the purposes of this Act;

Provided also that no officer lent by Government and contributing from his salary to any pension fund shall be entitled to claim any pension from the District Road Fund.

Their Functions.

139. The Committee may, through their Chairman or Vice-Chairman, enter into and execute any contract necessary for the purposes of this Act;

Mode of executing contracts.

Provided that every contract made on behalf of the Committee in respect of any sum exceeding five hundred rupees, or, which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Committee and shall be in writing and signed by at least two of the members of the Committee, one of whom shall be the Chairman or Vice-Chairman;

Unless so executed, such contract shall not be binding on the Committee.

140. No member, officer or servant of the Committee shall be in anywise pecuniarily interested in any contract or work made with, or executed for, the Committee; and if any such member, officer or servant be so interested, he shall be incapable of afterwards continuing to be a member of the Committee or holding or continuing in any office or employment under the Committee, and shall be liable, on conviction thereof, to a fine of five hundred rupees;

Penalty on members and officers being pecuniarily interested in contracts.

Provided that nothing in this section shall apply to any person by reason only of his being a shareholder in any company incorporated by Act of Parliament or by Royal Charter or otherwise, or registered under any Act for the registration of Joint Stock Companies, passed by the Parliament of the United Kingdom, or by any Indian Legislature, which may enter into any contract with the Committee, or execute any work for the Committee, if such person shall at or before the time of any such contract being made or tendered for, declare to the Committee the extent of his interest in such Company, and, if he be an officer or servant of the Committee, obtain the sanction of the Committee to his continuing to be such officer or servant.

Exception.

141. On the commencement of this Act in any district or part of a district, the Vice-Chairman, within three months after his election, shall cause to be prepared a general statement of the roads, bridges, water-channels and other means of communication to be brought within the operation of this Act within the three years then next ensuing, and the Committee shall, at some meeting to be held within one month after the submission of such statement or at any adjourned meeting, take such statement into consideration, and may pass such statement, or may make such alteration or addition therein as it shall think fit. Such statement shall be prepared with due advertence to the provisions of section 109.

142. The Committee shall forward the statement which shall be passed as provided in the last preceding section to the Commissioner for transmission to the Lieutenant-Governor.

143. The Vice-Chairman may, in any subsequent year, cause to be prepared a supplemental statement of the kind mentioned in section 141 or a revised statement, and every such supplemental or revised statement shall be subject to the provisions of the last two preceding sections with respect to the statement therein mentioned.

144. The Lieutenant-Governor may at any time order that any road, bridge, water-channel or other means of communication as abovementioned be included in, added to, or excluded from, any statement or supplemental or revised statement prepared as mentioned in section 141 or 143.

Estimates; determination of the rate for the year, and publication thereof.

145. The Collector shall, at such date as the Committee shall fix, prepare and deliver to the Committee a statement showing under separate heads the estimated proceeds for the year then next ensuing of the road cess at the maximum rate hereinbefore provided, and

also of any sum and of any sources of revenue for the said year which the Lieutenant-Governor shall have assigned to the said district, or which may be otherwise at the disposal of the Committee.

146. The Committee shall, at some meeting to be held in such month as the Lieutenant-Governor shall determine, prepare an estimate of the income and expenditure of the Committee for the year then next ensuing.

147. Notwithstanding that any work has been included in such estimate, the Committee shall not begin the execution of any work until detailed specifications and estimates of the same have been passed, or until the execution of the work shall have been otherwise sanctioned by any authority, whose sanction to the execution of such work is required under any rules made by the Lieutenant-Governor on that behalf as hereinafter provided.

This section does not, of course, apply to village roads, for which there are no regular rules. The Budget contains a lump allotment for the village roads of a Subdivision, and such allotment is distributed by the Branch Committee, or by the officer in charge of village roads as he thinks fit.

Circular No. 64*a* of the 17th July 1878 (Public Works) lays it down that a road or work costing more than Rs. 1,000 should be treated as a district work. The practice regarding the village roads, no doubt, varies in different Divisions. The following is an extract from a letter of the Burdwan Commissioner, dated 19th October 1878:—"Not more than Rs. 100 should be given to an ordinary village, but Rs. 200 or 300 may be given to very large villages, where good Committees can be got to carry out the work. . . . No subordinates are to be allowed to measure up work on such road. Only the Chairman or Vice-Chairman or responsible members of the Committee are to inspect. No one will undertake such works if they are to be rigidly called to account for every defect. The inspections are to be made in a liberal spirit, and merely to prevent deliberate fraud. The great test of the work is the satisfaction of the villagers." These instructions are not now acted up to. Regular village road overseers are often employed.

Circular No. 32 of the 27th September 1873 of the Government of Bengal, Revenue Department, relates to village roads:—"The Committee's object should be to get as many centres as possible (*e.g.*, planters, zemindars, village-headmen, Committee members, &c.). from which small improvements in village communications should be prosecuted by persons who are personally interested in such improvements." The Circular does not definitely lay down any limit for allotments, but paragraph 4 contains the following:—"It might perhaps be laid down that, ordinarily, not more than Rs. 50 would be given towards any work which benefited only one village, and not more than Rs. 100 to any work which benefited less than five or six villages. It might be provided that the

(b) may adhere to their original estimate, and re-submit it to the Commissioner with their reasons for adhering to the same.

(2)—On receipt of such estimate so re-submitted, the Commissioner may either sanction the estimate and rate as determined by the Committee, or may submit such estimate, together with the reasons recorded by the Committee for adhering to the same, to the Lieutenant-Governor.

153. Whenever any such estimate shall be so submitted by the Commissioner, the Lieutenant-Governor may approve of such estimate, or pass such orders as he shall think fit, in respect to the alteration of the details or of the total of such estimate ;

When estimate is submitted by Commissioner, Lieutenant-Governor may pass orders thereon.

Provided that the Lieutenant-Governor shall not make any such alterations, or require the Committee to make any such alterations, as shall have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the Committee for expenditure during the year in question, the cess being levied at the rate which may have been determined for such year by the Committee under section 148, unless such rate shall, in the opinion of the Lieutenant-Governor, be insufficient to provide for the proper maintenance of such works as are contained in the statement prepared under section 141 or 143.

If it shall appear to the Lieutenant-Governor that the proceeds of the cess at the rate so determined will not suffice for such purpose, the Lieutenant-Governor may order that the cess shall be levied for the year in question at such rate as he may deem sufficient for such purpose, subject to the limit in section 6 provided.

154. When the estimate prepared and the rate determined by the Committee shall have been approved by the Commissioner under sections 150, 151 or 152, the

Rate determined to be reported to Lieutenant-Governor.

rate so determined and approved shall be reported by the Commissioner to the Lieutenant-Governor, who shall forthwith cause the same to be published in the *Calcutta Gazette*.

155. When the Lieutenant-Governor shall, under section 153, have approved of any estimate submitted to him as provided by section 152 and of the rate determined by the Committee under section 148, or under clause (a) of section 152 in connection with such estimate, or when the Lieutenant-Governor shall, under section 153, have ordered that the cess shall be levied at any other rate, the Lieutenant-Governor shall cause such rate as finally fixed by him to be published in the *Calcutta Gazette*.

156. The rate published in the said Gazette, as provided in either of the last two preceding sections, shall be the rate at which the road cess shall be leviable in the district for the year in respect of which such rate is so published, and the Collector of the district shall cause such rate to be published, and proclaimed throughout the district, and notice be given thereof as in section 40 is provided.

157. Any estimate prepared under section 146 and approved as hereinbefore provided may be amended or revised at any time with the sanction of the authority who originally approved of such estimate; provided that the total of the estimate of expenditure as amended shall not exceed the total of the sums estimated to be available for expenditure during the year.

CHAPTER X.—*Branch Committees.*

158. In any district to which this Act shall have been extended, the Lieutenant-Governor may, in addition to a District Road Committee, form as many Branch Committees as he shall think fit for carrying out the purposes of this Act, and shall appoint a Chairman and Vice-Chairman thereof respectively, and shall define the portion of such district within which any Branch Committee shall exercise the powers conferred and discharge the duties imposed upon them by this Act;

Provided that, whenever the office of Vice-Chairman of any Branch Committee shall become vacant, the Chairman thereof may, with the approval of the Commissioner,

appoint any member of such Branch Committee to be Vice-Chairman thereof *ad interim* until the vacancy shall have been filled up by the Lieutenant-Governor.

159. The provisions of sections 112 to 117 (both inclusive), 119, 122 to 127 (both inclusive), 139, and 140 respecting District Road Committees, shall apply, so far as the same are applicable, to such Branch Committees.

Sections which apply to them.

Chairman and Vice-Chairman of Branch Committee may be removed.

160. Lieutenant-Governor may remove the Chairman or Vice-Chairman of a Branch Committee whenever he shall think fit.

161. Every Branch Committee may, from time to time, select any member thereof to be an additional member of the District Road Committee, and such member shall thereupon, for the space of one year, become a member of the said Committee.

162. Every such Branch Committee shall be, except as hereinafter provided, subordinate to the District Road Committee, and shall forward to the Committee such statements, suggestions, and estimates as it may think fit, and the Committee shall consider and have regard to such statements, suggestions, and estimates in framing the statements and estimates hereinbefore directed.

163. Any such Branch Committee may require that any such statement, suggestion or estimate shall be submitted to the Commissioner for his consideration and for that of the Lieutenant-Governor.

164. The Lieutenant-Governor may, in each year, assign to any Branch Committee so much of the Road Fund levied for that year in the district, for portion of which such Branch Committee is appointed, as he may think fit.

Branch Committee may require statement to be submitted to Lieutenant-Governor.

Funds of the Branch Committee.

165. The Lieutenant-Governor may, in any such case, declare that the Branch Committee shall have the full powers of a District Road Committee within such portion of the district, and whenever the Lieutenant-Governor shall so have declared, the District Road Committee shall, within such portion of the district, cease to exercise powers and functions under sections 133, 139, 141, 142, 143 and 146. Such powers shall then vest in the Branch Committee; and the provisions of sections 120, 121 (with the exception of clauses 2, 3, 4, and 6), 128, 142, 144, and 147 shall apply to the proceedings of such Branch Committee, provided that all correspondence with the Commissioner shall be submitted through the Collector of the district; in any case in which the Lieutenant-Governor may declare that a Branch Committee shall have the powers of a District Road Committee for specified works or specified purposes only, the powers of the District Road Committee in respect of such works and such purposes only shall cease within the said portion of the district, and such powers shall then vest in the Branch Committee.

166. Every Branch Committee so vested with powers as in the last preceding section provided shall prepare an estimate in regard to their annual income and expenditure similar to that required by section 146 to be prepared by the District Road Committee.

167. The provisions of sections 150, 151, 152, 153, and 157 shall, as far as they are applicable, apply to such estimate; provided that the aggregate amount to be expended by the Branch Committee in any year should not exceed the aggregate of the fund placed at their disposal for that year.

168. The Lieutenant-Governor may, at any time, order that any of the functions hereafter or referred to in Chap-

appoint any member of such Branch Committee to be Vice-Chairman thereof *ad interim* until the vacancy shall have been filled up by the Lieutenant-Governor.

159. The provisions of sections 112 to 117 (both inclusive), 119, 122 to 127 (both inclusive), 139, and 140 respecting District Road Committees, shall apply, so far as the same are applicable, to such Branch Committees.

Chairman and Vice-Chairman of Branch Committee may be removed.

160. Lieutenant-Governor may remove the Chairman or Vice-Chairman of a Branch Committee whenever he shall think fit.

161. Every Branch Committee may, from time to time, select any member thereof to be an additional member of the District Road Committee, and such member shall thereupon, for the space of one year, become a member of the said Committee.

162. Every such Branch Committee shall be, except as hereinafter provided, subordinate to the District Road Committee, and shall forward to the Committee such statements, suggestions, and estimates as it may think fit, and the Committee shall consider and have regard to such statements, suggestions, and estimates in framing the statements and estimates hereinbefore directed.

163. Any such Branch Committee may require that any such statement, suggestion or estimate shall be submitted to the Commissioner for his consideration and for that of the Lieutenant-Governor.

164. The Lieutenant-Governor may, in each year, assign to any Branch Committee so much of the Road Fund levied for that year in the district, for portion of which such Branch Committee is appointed, as he may think fit, not exceeding the total estimated proceeds of the road cess leviable within the said portion of the district; and, further, may allot to the said Branch Committee so much of the income of the District Road Fund from other sources as he shall think fit.

165. The Lieutenant-Governor may, in any such case, declare that the Branch Committee shall have the full powers of a District Road Committee within such portion of the district, and whenever the Lieutenant-Governor shall so have declared, the District Road Committee shall, within such portion of the district, cease to exercise powers and functions under sections 133, 139, 141, 142, 143 and 146. Such powers shall then vest in the Branch Committee; and the provisions of sections 120, 121 (with the exception of clauses 2, 3, 4, and 6), 128, 142, 144, and 147 shall apply to the proceedings of such Branch Committee, provided that all correspondence with the Commissioner shall be submitted through the Collector of the district; in any case in which the Lieutenant-Governor may declare that a Branch Committee shall have the powers of a District Road Committee for specified works or specified purposes only, the powers of the District Road Committee in respect of such works and such purposes only shall cease within the said portion of the district, and such powers shall then vest in the Branch Committee.

166. Every Branch Committee so vested with powers as in the last preceding section provided shall prepare an estimate in regard to their annual income and expenditure similar to that required by section 146 to be prepared by the District Road Committee.

167. The provisions of sections 150, 151, 152, 153, and 157 shall, as far as they are applicable, apply to such estimate; provided that the aggregate amount to be expended by the Branch Committee in any year should not exceed the aggregate of the fund placed at their disposal for that year.

168. The Lieutenant-Governor may, at any time, order that any of the functions hereafter mentioned or referred to in Chapter XI shall be discharged by any Branch Committee instead of by the District Road Committee in respect of any portion of the district for which such Branch Committee has been appointed.

169. The Lieutenant-Governor may, at any time, revoke an order forming any Branch Committee or an order declaring that a Branch Committee shall exercise the full powers or any special powers of a District Road Committee.

CHAPTER XI.—*Disbursement and Accounts of the District Road Fund.*

170. The District Road Fund shall be lodged with the Collector of the district, who shall keep a separate account thereof, and shall cause to be prepared an annual statement of such account, showing in detail therein all sums paid into and all disbursements made from the treasury on account of the District Road Fund during the year.

After the appointment of any Branch Committee in a district, the Collector of the district shall in like manner keep a separate account of the fund placed at the disposal of such Branch Committee.

171. All payments on account of the District Road Fund shall be made by the Collector out of the said fund upon cheques signed by the Vice-Chairman for sums not exceeding one hundred rupees. When the Vice-Chairman is absent, or from any cause incapacitated from signing, the Chairman may sign such cheques on behalf of the Vice-Chairman.

Cheques for sums exceeding one hundred rupees shall be signed by the Chairman and the Vice-Chairman. When the Vice-Chairman is absent or from any cause incapacitated from signing, such cheques shall be signed by any *ex-officio* member of the Committee other than the Chairman on behalf of such Vice-Chairman.

The word 'Chairman' in this section includes any officer for the time being in charge of the office of Chairman under a written order from the Chairman.

172. The Collector shall forward to the Vice-Chairman of every Committee, as soon as possible after the close of each month, the Collector's monthly account.

an account of his receipts and disbursements on account of the District Road Fund during such month.

173. Every Committee shall keep regular and detailed accounts of the moneys received or applied by them under the provisions of this Act and of their application, and such accounts shall be, at all convenient times, open to the inspection of all members of the Committee.

174. Every Committee shall appoint a standing Sub-Committee, consisting of the Vice-Chairman and not less than two other members, for the audit of their accounts; and the accounts of each month shall be laid before the Sub-Committee as soon as possible after the close of such month; whereupon the said Sub-Committee shall proceed to audit the said accounts in such manner as the Lieutenant-Governor may direct, and to pass or to amend and correct the said accounts as may be necessary, and to pass them as so amended and corrected.

175. For the purposes of every audit and examination of accounts under this Act, such Sub-Committee shall have power to call for all vouchers and papers which they may require.

176. When such Sub-Committee shall have audited and passed the accounts of any month as above provided, they shall certify the result and the correctness of the accounts as passed by them in such form as the Lieutenant-Governor may direct.

177. The accounts of each month audited, passed and certified as in the last preceding section provided, shall be submitted by the Committee, not later than the twenty-fifth day of the following month, to such officer as the Lieutenant-Governor may direct.

178. As soon as possible after the close of each year, the Vice-Chairman of every Committee shall prepare a detailed account of the receipts and expenditure of the District Road Fund during such year; and also a report

of the work done and in progress during such year, whether under the directions of the District Road Committee or of any Branch Committee other than a Branch Committee which has been vested with the full powers of a District Road Committee under section 165.

179. The annual accounts so prepared by the Vice-Chairman shall be examined and certified by the Sub-Committee of audit, and, after such examination and certification, shall be laid with the said annual report before a special meeting of the Committee to be held within two months of the close of such year; and the Committee shall submit a copy of the said account with a similar report to the Commissioner for transmission to the Lieutenant-Governor, who shall cause such accounts with an abstract of such report, together with such remarks as the Commissioner may have made thereon, to be published in the *Calcutta Gazette*.

180. Every District Road Committee may, from time to time, make, and when made, alter, add to, or cancel bye-laws not inconsistent with the provisions of this Act, for all or any of the following purposes, that is to say:—

(1) regulating the traffic and providing for the safety and convenience of passengers on any road, water-channel or other means of communication, under the charge of the Committee;

(2) providing for the preservation of such roads, water-channels and other means of communication, and of the trees planted by, or under the charge of, the Committee.

Notwithstanding any conviction before a Magistrate, a fine may be imposed *ex-officio* for the breach of any such bye-laws, provided that no fine exceeds for any man on a the sum of ten rupees, or, in the case of a continuing offence, the sum of two rupees for every day during which the offence is continued.

172. Every bye-law so made, and every alteration of, addition to, or cancellation of, such bye-law shall require the sanction of the Lieutenant-Governor;

Collector's account.

and, on such sanction being given, such bye-law shall be published in the *Calcutta Gazette* and in the vernacular of the district, as the Lieutenant-Governor may direct ;
 and on such publication such bye-law shall have the force of law.

CHAPTER XII.—*Miscellaneous.*

181. The Lieutenant-Governor may, from time to time, direct that such establishments shall be entertained, and such expenses incurred, in the offices of the Board of Revenue, of the Commissioners of Divisions, and of the Superintending Engineers, in any other office of control, in any office of account, and in any treasury, or that such special officers shall be employed and such expenses incurred by them, as may be necessary, for the exercise of proper control over the proceedings of the Collectors and District Road Committees and Branch Committees in the discharge of their duties under this Act, for the proper examination and checking of estimates furnished and accounts kept under this Act, and for the proper audit of such accounts, and for the performance of the duties connected with the cash transactions of the District Road Committees :
 and the Lieutenant-Governor may make rules providing for the recovery of the cost of the establishments so entertained, and the officers so employed, and of the expenses so incurred, from the several District Road Committees in such proportions as he may think fit ; provided that the total amount which any District Road Committee is required to pay under this section shall not in any year exceed two per centum on the income of such Committee for such year.

PART IV.

CHAPTER XIII.—*General.*

182. The Lieutenant-Governor may, from time to time, make, and when made, from time to time alter, add to, or cancel any rules not inconsistent with the provisions of this Act.

(a) regulating the performance of the duties of the District Road Committees and Branch Committees, and of all persons employed under this Act, and in regard to the qualification, appointment, election and discharge of such person ;

(b) prescribing the authorities by whom the execution of works of different classes respectively may be authorized and sanctioned ;

(c) prescribing forms for the estimates, accounts, reports and statements required by this Act, to be kept or made by the District Road Committee ;

(d) prescribing forms of accounts to be kept by the Collector under this Act ;

(e) providing for the submission and checking of any estimates or accounts, and for the audit of such accounts as aforesaid ;

(f) fixing the dates for payment of instalments of cess under sections 42 and 57 ;

(g) determining the amount of fees to be levied for supplying copies of proceedings of any District Road Committee or Branch Committee as provided in section 127 ;

(h) fixing the month in which the meeting mentioned in section 146 shall be held :

(i) and generally for the purposes of this Act.

Such rules shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law.

SCHEDULE A.

Form of Return prescribed by Section 14.

Amount of Government revenue or rent payable by the
estate or tenure : _____ Rs. A. P.

PART I.

District

Name by which the estate or tenure is known, and the number which it bears on the Collector's general register, or on any other register kept by the Collector :—

Details of lands in the actual occupation or cultivation of the person submitting the return :—

1	2	3	4	5
Pergunnah.	Name of village and thana in which the lands are situate.	* Area of land, if known.	Deduct area of land situate within any municipality.	Annual value of remaining land.

NOTE.—*In the body of this statement should be entered only nij-jote lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.*

PART II.

District

Name and number of estate or tenure as in Part I.

Details of lands held by cultivating ryots paying direct to the persons submitting the return :—

1	2	3	4	5	6	7
Pergunnah.	Name of village and thana in which the lands are situate.	Name of ryot, name of village, thana, and district in which he resides.	Area occupied, if known.	Annual rent.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

* As amended by Act II, 1881, B. C.

SCHEDULE A.—(Continued.)

PART III.

District

Name and number of estate or tenure as in Pa.

Details of the tenure-holders paying to the person submitting the return:—

1	2	3	4	5	6
Name of tenure-holder and person paying rent for him borne on the books of holder of estate or tenure.	Name of village, thana and district in which such person resides.	Name of village and thana in which tenure is situated.	Name of village and thana in which māl cutcherry is situated.	Area, if known.	Annual rent paid by tenure-holder.

PART IV.

District

Name and number of estate or tenure as in

Details of lands included in the estate or tenure person submitting the return which are held by than himself, but for which no rent is paid:—

1	2	3	4	5	6	7
Pergunnah in which situate.	Name of village and thana in which situated.	Name of holder, and owner, if known.	Name of village, thana, and district in which the holder resides.	Area, if known.	Deduct area of land included in any municipality.	Annual value of remaining land.

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information, and belief.

Signed_____

N.B.—This return must be signed by the holder or his authorized agent, whose address must also be given.

SCHEDULE B.

FORM NO. I.

Form of notice upon a revenue-paying estate or rent-paying tenure under Section 17.

District of

NOTICE UNDER SECTION 17 OF THE CESS ACT, 1880.

The holders of estate or tenure (*description to be filled in*) in the district of and all others interested therein are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure and the rents paid therefor. Such return must be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him, until such return shall be lodged. Notice is hereby given that no rents due to the holders of the said estate (or tenure) can be recovered by suit after such time until such return be so lodged.

If the annual amount of revenue or rent payable on the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If such amount exceeds Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

(Sd.) A. B.,

Collector.

COLLECTOR'S OFFICE,

Dated

N.B.—To this notice shall be annexed forms of Parts I, III, and IV of the return which is mentioned in Schedule A.

SCHEDULE B.

FORM NO. II.

Form of notice upon a revenue-free estate or rent-free tenure under Section 17.

District of

NOTICE UNDER SECTION 17 OF THE CESS ACT, 1880.

The holder of the revenue-free estate or rent-free tenure (*description to be filled in*) in the district of and all others interested therein are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure. Such return must be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him until such return shall be lodged.

Notice is hereby given that no rents due to the holders of the said estate (or tenure) can be recovered by suit after such time until such return be so lodged.

If the gross annual rental of the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If the gross rental exceed Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

(Sd.) A. B.,

COLLECTOR'S OFFICE,

Collector.

Dated

N.B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in Schedule A.

SCHEDULE C.

Form of Notice under Section 33.

District of

NOTICE UNDER SECTION 33 OF THE CESS ACT, 1880.

The owner, chief agent, manager or occupier of (*give the name by which the concern or property is known*) situated in the district of is hereby required to lodge in the office of the Collector of of a return in the form hereunto annexed, showing the amount of land under cultivation at the date of this return in the said

Such return must be signed by him and be lodged within the space of two months from the service of this notice (unless within the said two months such owner, chief agent, manager, or occupier obtain from the Collector an extension of the said space of two months), under penalty of a daily fine of fifty rupees for every day after the expiry of such period or extension thereof until such return shall be presented.

Form of Return to be annexed to the Notice.

District

Details of lands acquired under any rules for the sale, lease, grant, or clearance of waste lands, or held direct from Government and used for the cultivation of tea, coffee or cinchona, under the control of the persons submitting the return:—

1	2	3	4	5	6	7
Districts	Pergun- nahs and thanas	Designation by which the estate, lot or grant is known, and the number it bears on any register kept by the Collector.	Name of owner, agent, manager or occupier	Entire area of land.	Area or areas of lands under cultivation.	Aggregate value at Rs. 10 per acre of land in column 6.
In which the lands lie.						

SCHEDULE C.—(*Continued.*)

I, X. Y. Z, do declare that the statements contained in the above return are true to the best of my knowledge, information, and belief.

Signed————

N.B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE D.

*Form of Notice under Section 52.*NOTICE TO HOLDERS OF LANDS HELD RENT-FREE UNDER
SECTION 52 OF THE CESS ACT, 1880.

Notice is hereby given to all concerned that the lands specified in the annexed extracts from valuation-rolls of estates and tenures have been entered by the holders of such estates and tenures in the valuation returns of their estates and tenures under the Cess Act, 1880, and have been valued as shown in the extracts.

Every owner and holder of any land entered in these extracts may appear before the Collector within one month of the publication of this notice, and may object to the amount at which his land has been valued.

If no such objection is made, the owners and holders of lands will be bound to pay year by year to the holder of the estate or tenure in which his land has been entered the amount of road cess and public works cess calculated on the annual value of such land as entered in these extracts at the full rate which may be fixed for the year in the district.

If any instalment of the cess due upon any of the lands included in these extracts is not paid to the holder of the estate or tenure on or before the date which the Lieutenant-Governor may fix for the payment of such instalment, the holder of the estate or tenure will be entitled to recover double the amount due with interest and all costs of suit.

SCHEDULE E.

Form of Notice under Section 72.

District of

NOTICE UNDER SECTION 72 OF THE CESS ACT, 1880.

The owner, chief agent, manager or occupier of the (*give the designation of the property*) situated in the district of , is required to lodge in the office of the Collector of the district of a return in the form hereunto annexed, showing the net profits of the calculated on the average of the profits of the last three years for which accounts have been made up. Such return must be signed by him or his authorized agent, and be lodged within the space of two months from service of this notice, unless within the said two months an extension of the time allowed is obtained from the Collector.

(Sd.) A. B.,
Collector.

COLLECTOR'S OFFICE,
Dated

Annexed Form of Return.

District

Detail of yearly profits of mines, quarries, railways, and tramways, or other immovable property in the possession or under the control of the person submitting the return :—

1	2	3	4
Districts	Pergunnahs	Name of holder or manager.	Annual net profits per annum on the average of the last three years for which accounts have been made up.
In which the property lies.			

SCHEDULE E.—(*Continued.*)

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed————

N. B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE F.

Form of Notice under Section 99.

District of

NOTICE UNDER SECTION 99 OF THE CESS ACT, 1880_{DER}

The occupiers, tenure-holders, under-tenants, and r_y on estate or tenure (*the estate, tenure or lands to be here clearly designated*) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district, or to (*name of person*) hereby appointed to receive the same. The Collector will grant receipts for all sums paid, and such receipts will, under the provisions of the above Act, be a valid discharge to the extent of the sums covered by such receipts, for rent due, or hereafter to become due as above stated by the holders of such receipts. All payments, except to the Collector, until further order, will be null and void.

(Sd.) A. B.,
Collector.

PART IV.

Collectors, Assistant Collectors, &c.

REGULATION II OF 1793.

*A Regulation for abolishing the Courts of Mál Adálat or Revenue Courts, and transferring the trial of the suits which were cognizable in those Courts to the Courts of Díwání Adálat; and prescribing Rules for the conduct of the Board of Revenue and the Collectors.**

1. In the British territories in Bengal the greater part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands: it follows that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture.

Preamble. But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these Provinces.

The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence; and the generality of such of the lower orders of the Natives as are not of that persuasion, are, from habit or necessity, in a similar predicament.

The extensive failure or destruction of the crops that occasionally arises from drought or inundation, is in consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874. The portions repealed by Acts No. XXV of 1854, No. VIII of 1868, No. XXVI of 1871, No. XII of 1873, No. XVI of 1874, No. XII of 1876, and by Regulations V of 1804, XV of 1813 and III of 1822 have been omitted.

So much of this Regulation as requires the appointment of díwáns in the different districts, or defines the duties of the díwáns, or relates in any other manner, directly or indirectly, to those officers, is superseded by section 2, Regulation XV of 1813.

the manufacturers, from whose labours the country derives both its subsistence and wealth.

Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities, until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from inundation ; and, as a necessary consequence, the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce, which may be expected to occur, notwithstanding the adoption of the above precautions to obviate them.

To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British Administration has been directed, in its arrangements for the internal government of these Provinces.

As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever.

These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose.

The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government.

With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government.

The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bighá of land in cultivation, of which, after deducting the expenses of collection,

ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder.

Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government, might have fixed, was paid to him by the farmer or from the public treasury.

When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate, and monied men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious.

The same causes, therefore, which prevented the improvement of land, depreciated its value.

Further measures, however, are essential to the attainment of the important object above stated.

All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats, or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of Mál Adálat, or Revenue Courts.

The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue.

The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the revenue-officers are vested with these judicial powers.

Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the revenue-officers themselves must be the

by them in one capacity can never hope to obtain redress from them in another.

Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants.

Other security, therefore, must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected.

Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.

The revenue-officers must be deprived of their judicial powers.

All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants.

The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it.

No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected.

Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The following rules, being the rules passed for the guidance of the Collectors and the Board of Revenue, on the 8th June, 1787, and the 25th April, 1788, with alterations adapted to the principles above stated, have been accordingly enacted.

2.—[*Repealed by Act No. XII of 1873.*]

3. The collection of the revenue payable to Government from the estates in each zila is to be committed, as heretofore, to a civil covenanted servant of the Company, who is to be styled Collector of the Revenue of the zila to which he may be appointed.

4. The Collectors are to correspond with the Board of Revenue, and to conform to all instructions with which they have been furnished by that Board, and that are or may not be altered or revoked by this or any other Regulation, and also to all instructions which the Board of Revenue may hereafter transmit to them.

5. The Collectors of the several zilas are to use a circular seal, one inch and a-half in diameter.

The seals of the Collectors in Bengal and Orissa are to bear an inscription to the following effect, in the Bengal and Persian characters and languages, and the seals of the Collectors in Bihár a similar inscription, in the Persian character and language, and the Hindústání language and Nágarí character: "The seal of the Collector of the zila of"

6. The Collectors are to keep a regular diary of their official transactions, either in the English, Persian or Bengal language, recording and attesting them with their official signature at the time they may take place.

7. The duties prescribed in the following section are to be performed by the Collectors under the superintendence of the Board of Revenue.

8. *First.*—To collect the amount of the fixed revenue assessed upon the lands of the zamíndárs, independent taluqdárs or other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded.

Second.—To collect the stipulated annual revenue from the farmers of estates let in farm.

Third.—To levy the rents and revenue from estates held khás.

Fourth.—To make the future settlement of khás or farmed estates agreeably to the regulations and instructions which they may receive for that purpose.

Fifth.—To prosecute for the recovery of the dues of Government from lands, of whatever description, held exempt from the payment of revenue under illegal or invalid tenures.

Sixth.—To pay the pensions and allowances included in the public revenue, and the pensions and compensations granted in consequence of the abolition of the sáir.

Seventh.—To execute the instructions which may be issued to them by the Court of Wards, regarding disqualified landholders and their estates.

Eighth.—To superintend the division of landed property paying revenue to Government, which may be ordered to be divided into two or more distinct estates.

Ninth.—To apportion the public revenue on lands ordered to be disposed of at public sale for the discharge of arrears of revenue.

Tenth.—To collect the tax on spirituous liquors and intoxicating drugs or articles.

Eleventh and Twelfth.—[*Repeated by Act No. XVI of 1874.*]

Thirteenth.—To perform the above, and all other duties, according to the rules that have been or may be prescribed to them.

Fourteenth.—To transmit such annual, monthly or other accounts as they now furnish, or may be hereafter required to send by the Board of Revenue, or any officer under that Board empowered to require such accounts.

Fifteenth.—To conform to all special orders that have been or may be issued to them by the Board of Revenue, or by public officers empowered to issue such orders.

9. All Native officers under the Collector are to act agreeably to his orders and such rules as he may prescribe.

Native officers to obey orders of Collector.

They are not to perform any act of authority without his sanction or authority, under pain of being fined in a sum not exceeding six months' salary, or of being dismissed from their offices by the Collector, the Board of Revenue, or the Governor General in Council, and also of being sued

in the Court of Judicature for damages by any person who may consider himself aggrieved by such unauthorized act.

The Sudder Díwání Adálat laid it down that full legal proof is not requisite for the suspension of a Native ministerial officer; there must be grounds for strong suspicion.—S. D. A., 1859. p. 1226.

10. The Collectors are prohibited from employing, directly or indirectly, their private servants, whether baníyás or others, in the discharge of any part of their public duties, it being required that, in all matters relating to the trust committed to them, they act as the only empowered agents of Government.

Collectors not to employ private servants in public matters.

This prohibition, however, is not meant to restrict them from occasionally employing their assistants or their inferior public servants, in the cases and in the manner in which they are authorized to make use of their agency.

11. The khazánchi or Native cash-keeper in each zila is to be nominated by the Collector, who is to take good and sufficient security from him for the faithful discharge of his trust, and for making good all deficiencies in the public money that may be committed to his charge.

Appointment and removal of Native cash-keepers.

The Collector is to transmit the names of the person whom he may nominate to the office of khazánchi, and of his surety, with a copy of the engagement executed by the latter, to the Board of Revenue; but the person so nominated shall not be considered as appointed until the Board of Revenue shall have signified their approbation both of him and his surety.

The Native cash-keeper so appointed shall not be removed but for misconduct, or other sufficient cause, proved to the satisfaction of the Board of Revenue; and he and the Collector shall be held jointly and severally responsible to Government for the public money committed to their charge.

12.—[*Repealed by Act No. XXV of 1854.*]

13.—[*The appointment and dismissal of all Native public servants on the establishments of the collectorships (the keepers of the Native records and the khazánchi excepted) are vested in the Collectors.*]

Appointment and removal of Native servants.

Repealed by Reg. V of 1804, sec. 3.

But they are to transmit to the Board of Revenue regular notice of all appointments and removals, and are to employ none but such public and registered officers in matters in any respect relating to their official duty, and are not, under any plea or pretext, to confer on their public officers any private trust relating to their personal concerns.

14. In the event of the death or removal of a Collector, or of his absence from his station, the senior assistant on the spot is to perform the duties of Collector, and the public officers of the collectorship are accordingly to obey his orders.

In absence of Collector, senior assistant to officiate.

15. No Collector, Assistant to a Collector, or any Native in the employ of a Collector or of an assistant, shall hold, directly or indirectly, any farm, or be concerned on their private account in the collection or payment of the revenue of any lands in the zila, either as farmer, surety, or otherwise; and Native officers and private servants and dependants of Collectors and assistants are prohibited from purchasing, directly or indirectly, any land that the Collector may dispose of at public sale, under the penalty of forfeiting the property to Government, upon proof being made, to the satisfaction of the Governor General in Council, of the property having been so purchased.

Collectors and their officers prohibited being concerned extra officially in revenues.

16. The rules in the preceding section, however, are not to be considered to prohibit a Native officer of a Collector, or any private servant of a Collector or of an assistant, from purchasing *bonâ fide* the proprietary right in lands situated in the zila, by private sale.

Bonâ fide purchases of land at private sale by Collector's officers, &c.

17.—[*Repealed by Act No. VIII of 1868.*]

Collectors and their assistants prohibited from trading.

18. No Collector or Assistant Collector shall, directly or indirectly, carry on any trade, or be concerned in any commercial transaction whatever.

This prohibition with regard to Collectors and their assistants is declared to extend to the purchase, directly or indirectly, of any goods or commodities in the British dominions in Bengal, for the purpose of remitting money to Europe.

19.—[*Repealed by Act No. XII of 1873.*]

20. The Collectors are to be careful that the accounts
Collectors to keep re- and records of their respective zilas
cords. are kept complete and duly preserved.

21, 22.—[*Repealed by Act No. XVI of 1874.*]

23.—[*Repealed by Act No. XXVI of 1871.*]

24. The Collectors are prohibited deputing any person
Collectors not to into the zila of any other Collector,
exercise authority be- or exercising any authority beyond
yond limits of their zilas the limits of their respective zilas,
without orders. excepting in cases in which they may
be authorized so to do by special orders from a competent
authority.

25. The Collectors are to give monthly receipts for all
Rule with regard to payments of revenue into their trea-
receipts. suries, specifying the date or dates on
which the money may be received.

The keepers of the Native records are to keep a register
of these receipts regularly numbered.

After having registered the receipts they are to attest on
the face of them the date on which they may be registered.

A copy of this register is to be transmitted monthly to
the Board of Revenue, or as often as that Board may
require.

A similar register of receipts is to be kept by all tahsil-
dars, sazawals or other Native officers entrusted with the
immediate collection of the public revenue, and a copy of
it is to be transmitted to the Collector monthly, or as often
as he may require.

26. The monthly or other receipts, for salaries, pensions
Register of receipts or allowances, of whatever kind, which
for salaries, &c. may be paid by the Collectors, are to
be deposited amongst the public re-
cords of their respective zilas, and a register of them is to
be kept by the keepers of the Native records.

27.—[*Repealed by Act No. XVI of 1874.*]

28, 29.—[*Repealed by Regulation III of 1822.*]

30, 31, 32.—[*Repealed by Act No. XVI of 1874.*]

33. The Board of Revenue are empowered to require
In what cases Board the personal attendance of any pro-
may require personal prietor or farmer of land, or any
attendance of Natives. dependent taluqdar, under-farmer or

raiyat, or any Native officer employed under a Collector, for the purpose of adjusting any settlement, or examining any accounts, or inquiring into any matter coming within their cognizance, provided the personal attendance of the party shall appear to them indispensably necessary.

In such cases, the Board are to direct the Collector to serve such person with a written notice under his official seal and signature, specifying the business on account of which his attendance is judged necessary, and requiring him to attend the Board by such period as they may limit, under pain of being subject to such daily fine until he attends, or shows satisfactory cause for his non-attendance, as the Board may think proper to impose.

The Board are empowered to fine such persons neglecting to appear by the time required, in such amount as may appear to them proper upon a consideration of the case and the situation and circumstances in life of the party, and the amount of the fine shall be levied by the Collector, by the process prescribed for the recovery of arrears of revenue.

But the Board of Revenue are prohibited requiring the personal attendance of any person in cases in which the business can be transacted by a vakil.

34. 35 — [*Repeated by Regulation III of 1822.*]

36. The Board of Revenue are empowered to issue orders to their subordinate officers for making the settlement of lands that are or may be khas, in conformity to the Regulations, and any special instructions which may be prescribed to them by the Governor General in Council.

37. In all cases of a settlement being made with or on behalf of zamíndárs, independent taluqdárs or other actual proprietors of land, their lands are to be deemed sufficient security for the payment of the revenue.

But where lands are let in farm, a malzamin, or surety for the punctual discharge of the revenue, is to be invariably required.

38. No remissions upon the settlement of a preceding year, nor any remissions whatsoever, are to be granted by the Board without the sanction of the Governor General in Council.

39. It is to be observed as a general principle, that the settlement of lands that are or may be khas is to be made by the Collectors under the regulations and the instructions of the Board of Revenue.

Settlements to be made by Collectors.

But if the Board should deem a special deputation of one of their members, or of any other person, necessary to form the settlement of any such lands, they are to propose the measure to the Governor General in Council, with their reasons for recommending it.

40. Upon a settlement being concluded with any proprietor or farmer, conformably to the Regulations, the Board of Revenue are to issue the usual bandobasti parwana to the proprietor or farmer, without applying to the Governor General in Council for his sanction for that purpose.

Procedure on settlement being concluded.

41. The collection of the revenue is committed to the Collectors; but the Board of Revenue are to see that the revenues are realized by the stipulated periods, or that solid and satisfactory reasons are assigned by the Collectors for any delay or deficiency.

Collection of revenue.

The power of coercion over the proprietors and farmers of land is also vested in the Collectors, as prescribed in Regulation XIV, 1793.

42. The Board are authorized to grant temporary suspensions of the demands of revenue whenever it may appear to them indispensably necessary, reporting the sum suspended, without delay, to the Governor General in Council, with their reasons for the measure. But they are not to grant any suspensions beyond the current year.

Temporary suspensions.

43. No remissions of balances are to be granted without the special authority of the Governor General in Council.

Remissions of balances.

44.—[*Repealed by Act No. XXVI of 1871.*]

45. The Board of Revenue are to furnish the Governor General in Council with such annual, monthly or other accounts, as they now are or may be required to submit to him.

Duty of Board to furnish accounts, &c.

They are likewise to observe all special orders which they have received or may receive from the Governor General in Council.

REGULATION XI OF 1806.

*A Regulation for facilitating the progress of detachments of troops through the Company's territories; for affording any requisite assistance to persons travelling through those territories; and for extending the rules contained in sections 68 and 72, Regulation XXII, 1795, in clauses fifth and sixth, section 14, Regulation VIII, 1805, and in section 31 of that Regulation, to the whole of the Company's Provinces subject to the immediate government of the Presidency of Fort William; for the guidance of the civil officers in applying for guards from the regular battalions; and for modifying the rule contained in clause first, section 12, Regulation I, 1804.**

Secs. 1—7. It has not been thought necessary to print these Sections. They relate to the duties of a Collector in procuring supplies for troops passing through his District. The Commanding Officer intimates the probable period of arrival and the supplies required. It is the duty of the Collector to furnish the supplies, which are to be paid for at the current bazar prices.

8. Whenever any military officer, not commanding nor proceeding with a corps or detachment of troops, or any other person (whether European or Native) not restricted by Government from passing through the country, may be proceeding within any part of the Company's Provinces, either on the public service or on his private affairs, and shall be in need of assistance during his route to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of Police, to aid him in providing any requisite bearers, boatmen, carts or bullocks, or any necessary supplies of provisions or other articles.

Police empowered, in cases of necessity, to assist travellers in prosecuting their route.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874. Repealed, as to coolies, by Regulation III of 1820.

On receiving an application of the above nature, the Police-officer to whom it may be made shall furnish the aid required, or cause it to be furnished by the proper person or persons; provided that a sufficient number of persons who have been accustomed to act as bearers or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture and occasionally let for hire, can be procured within his jurisdiction.

Assistance how
afforded.

But all Police-officers are strictly forbidden, under pain of dismission from office (under the rules prescribed by Regulation V of 1804),* on applications of the above nature, to compel any persons not accustomed to act as bearers or boatmen, to serve on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts kept for private use and not for hire, or exclusively appropriated to the purposes of agriculture.

Persons and carts and
bullocks not to be em-
ployed in furnishing
assistance.

Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first Police-station in the next zila through which the corps or detachment is to march, unless a voluntary engagement to the contrary may be entered into by such persons.

Persons employed to
be at liberty to return
from first Police-
station.

The Police-officers are further enjoined to be careful that a proper compensation for the bearers, boatmen, carts or bullocks employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto.

Conditions of assist-
ance to travellers.

For this purpose, the Police-officers are authorized to adjust the rate of hire to be paid for the bearers, boatmen, carts or bullocks required, and the price of any articles provided; as well as to demand that the whole or a part, according to the circumstances of the case, be paid in advance.

Should any traveller refuse to comply with the adjust-

* Repealed by Act No. XVI of 1874.

ment or demand so made by a Police-officer, he will not be entitled to any assistance from the officers of Government under this Regulation.

“ The Police-officer *shall* furnish the aid required.” A Police-officer refusing to furnish aid will be punishable under sec. 187 or sec. 166 of the Penal Code, according as the person requiring aid is a public servant or private person.

This section indirectly imposes a legal obligation on bearers, owners of carts, &c. *Seemle*,—there would be no right of private defence against Police-officers compelling bearers to serve or seizing bullocks and carts, provided the third paragraph be not transgressed. Police-officers are forbidden to compel persons to serve who are not accustomed to act as bearers, &c.; *ergo*, if they are so accustomed, the Police may compel them to serve. Some district officers are loth to render assistance to private travellers; but as the law stands, the latter have a right to demand such assistance.

Reg. VI of 1825 empowers Collectors to fine landholders, farmers, &c., who refuse to provide supplies for troops after due requisition.

REGULATION IV OF 1821.

*A Regulation for authorizing a Collector of land-revenue or other officer employed in the management or superintendence of any branch of the territorial revenues, to exercise, in certain cases, the powers of Magistrate or Joint Magistrate, and for authorizing a Magistrate or Joint Magistrate, or Assistant to a Magistrate, to exercise in certain cases the powers of a Collector of land-revenue or of any other officer employed in the management or superintendence of any branch of the territorial revenue: Also, for explaining the duties of an Assistant Collector of revenue, and for defining the duties and powers vested in Assistant Collectors or other officers appointed to the charge of the revenues of parganas or other local divisions, or employed in the performance of any portion of the functions ordinarily belonging to the Collectors of land-revenue.**

1. WHEREAS it is expedient to explain the duties which
 Preamble. may be performed by the assistants
 to the Collectors of revenue, and to
 define the duties and powers vested in Assistant Collec-
 tors or other officers, when appointed to the charge of the

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV. of 1874.

revenues of parganas or other local divisions, or when employed in the performance of any portion of the functions ordinarily belonging to Collectors of the land-revenue; the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the Presidency of Fort William.

2, 3.—[*Repealed by Act No. XII of 1873.*]

4, 5.—[*Repealed by Act No. XII of 1876.*]

6. *First*.—[*Repealed by Act No. XII of 1876.*]

Second.—[*Repealed by Act No. XVI of 1874.*]

7. In the institution of suits for the recovery of the

Institution of suit in Zila Court for recovery of public revenue. public revenue, or in any case in which the institution of a suit by the Collector in the Zila Courts is authorized or directed by the Regulations,

a Magistrate or Joint Magistrate or Assistant to a Magistrate, employed in the collection of the revenue, not being himself in charge of the office of Judge of a Zila Court, shall proceed according to the Regulations already in force for the guidance of the Collectors under similar circumstances.

8. *First*.—It is hereby declared and enacted, that it

Power to alter limits of Collectorships, and number of officers employed as Collectors. is and shall be lawful for the Governor General in Council to cause such alterations to be made in the limits of the several Collectorships, and in the

number of the officers employed as Collectors of land-revenue, as may from time to time appear expedient, as well as to vest such officers, being covenanted servants, with authority to exercise the whole or any part of the functions ordinarily exercised by Collectors of land-revenue in such mahál or maháls belonging to such district or districts as may from time to time be deemed expedient; and any officers so employed shall perform their prescribed duties in the same manner, and subject to the same condition and liabilities, as attach to Collectors of land-revenue in regard to such duties.

Second.—It shall also be competent to the Board of

Power to depute subordinate officer to perform Collector's duties. Revenue or other Authority exercising the powers of that Board to depute any of the officers subordinate to their authority to exercise and perform

all or any of the powers and duties ordinarily vested

in Collectors of land-revenue within such local limits as they may judge expedient ;

provided, however, that in all such cases the Board or other Authority aforesaid shall, on the day in which they may depute any officer as foresaid, or as soon after as practicable, report their having done so for the information and orders of the Governor General in Council.

Third.—The Collectors of revenue are hereby authorized,

<p>Power of Collectors to delegate part of their duties to their Assistants.</p>	<p>with the sanction of the Board of Revenue, to delegate to their Assistants any part of their prescribed duties, which, from the extent of their general business or other cause, they may be unable to give due attention to themselves ;</p>
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provided, always, that, in the event of a Collector deputing his Assistant to make local inquiries, or for any other purpose connected with the collection of the public revenue, he shall immediately report the same for the information and orders of the Board of Revenue to which he may be subordinate.

Fourth.—[*Repealed by Act No. XII of 1873.*]

Fifth.—Assistants or other officers exercising the powers

Assistants, &c., to be guided by Regulations, responsible for performance of duties, and amenable to Civil Courts.

of Collectors of revenue, or any portion thereof, under the provisions of this Regulation, shall be guided in every respect by the Regulations which have been, or may be, enacted for the management and collection

of the revenue, as far as the same may be applicable to the duties committed to them respectively, and shall be considered responsible for the due performance of the duties entrusted to them, and shall be amenable to the Civil Courts of Judicature for any acts done by them in their official capacity, in opposition to the Regulations, in the same manner, and under the same rules, as the Collectors of revenue.

REGULATION VII OF 1823.

*A Regulation for prohibiting loans by Covenanted Civil servants from persons subject to their official authority and influence.**

This Regulation prohibits Covenanted Civil Servants from incurring debt to subordinate Native officers, and to Zemindars and others residing or having property within their districts. The compiler has not considered it necessary to print the Regulation in full.

REGULATION V OF 1827.

*A Regulation for modifying the rules at present in force for the management of estates under attachment by orders of the Courts of Justice in certain cases.**

1. WHEREAS it is expedient in all cases of the attachment of landed property under orders of the Courts of Justice, that the management of the estate attached should be placed under the superintendence of the Collectors of land-revenue, the following rules have been enacted by the Governor General in Council, to be in force from the date of their promulgation throughout the territories immediately subject to the Presidency of Fort William.

2. The rules contained in sections 5 and 6, Regulation V, 1799, and clauses 5 and 6, section 16, Regulation III, 1803,† regarding the administration and management of estates under orders of the Zila Courts, are hereby declared subject to the following modifications.

3. Whenever the Zila Courts may deem it just and proper, under the provisions of the several Regulations above-mentioned, to provide for the administration or management of landed property, the Court shall issue a precept to the Collector of land-revenue

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

† Repealed by Act No. XIX of 1873.

of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to appoint a person for the due care and management of the estate, under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof;

provided, however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment, it shall be competent to such person to represent his objections to the Board of Revenue, and the Board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.

4. The precept of the Zila Court above-mentioned shall

Precept to state property included in attachment.	state specifically the property to be included in the attachment, and the attachment shall not be withdrawn
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without a further precept from the Court to that effect.

ACT No. XX OF 1848.

*An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of land-revenue in the Lower Provinces of the Bengal Presidency.**

WHEREAS, by sundry Regulations of the Bengal Code, Preamble.	provision is made for the imposition of a daily fine by the Board of Revenue
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or other Authority exercising the powers of that Board on any proprietor or farmer of land subject to the provisions contained in the said several Regulations, who, when duly summoned by the Collector or other officer exercising the powers of Collector, shall omit or refuse to attend, or to cause his officer or agent to attend, or to furnish the accounts or documents required, and shall not show sufficient cause for such omission; and it is further provided that the fine, when confirmed by Government, is to be

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

levied by the same process as is prescribed for the recovery of arrears of revenue; and whereas in many cases, by the delay thus occasioned, the whole burden of the penalty is greatly increased beyond what would be necessary if summary power were given to the officer by whom the requisition is made to impose and levy reasonable fines, subject to review by the Commissioner of Revenue and other superior authority; It is enacted as follows:

1. If any proprietor or farmer of land shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector, in any case specified in any of the said Regulations, by the time prescribed in the notice issued by the Collector, or shall omit or refuse to furnish the accounts or documents required, and shall not show sufficient cause for such omission, the Collector may impose of his own authority such daily fine, to be payable daily until compliance with the requisition, as he may think adequate to the situation and circumstances in life of the defaulter, not exceeding in any case the daily fine of fifty rupees: and the amount of such fine, accruing due from time to time, may be levied without further confirmation by the same process as is prescribed for the recovery of arrears of revenue.

2. The Collector shall forthwith report the imposition of every such fine, and the amount thereof, and also from time to time the amount levied, to the Commissioner of Revenue, who shall report the same for the information of the Local Government.

3. Every order passed by a Collector under this Act shall be appealable in the usual manner to the Commissioner of Revenue and other superior authority; but no such appeal shall avail to prevent the levy of any fine so imposed pending the appeal.

4. Whenever the amount levied under any such order, issued for any default by authority of a Collector under this Act, shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner

of Revenue; and no further levy for such default shall be made otherwise than by authority of the Commissioner of Revenue.

5. Nothing in this Act contained shall be deemed to repeal the power of imposing daily fines and of levying the fines so imposed in the manner prescribed by the said several Regulations.

Saving of power to fine.

6. The word 'Collector' used in this Act shall be taken to mean any person lawfully exercising the powers of a Collector.

'Collector' defined.

7. This Act shall not extend to the North-West Provinces of the Presidency of Bengal.

Extent of Act.

PART V.

Drainage.

ACT No. VI (B C.) OF 1880.

An Act to provide for the Drainage and Improvement of Lands.

WHEREAS it is expedient that provision should be made for the better drainage and improvement of lands in the territories administered by the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

1. This Act may be called "The Bengal Drainage Act, 1880."

Short title.

It extends to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal;

Extent.

and it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Commencement.

2. Bengal Act V of 1871 (*the Hooghly and Burdwan Drainage Act*) shall be repealed on and from the date upon which this Act comes into force, but, subject to the provisions of this Act, this repeal shall not affect the past operation of such Act, or anything duly done or suffered, or any right, privilege, obligation, or liability, acquired, accrued, or incurred thereunder.

3. In this Act, unless there be something repugnant in the subject or context—

‘The Collector’ means the officer in charge of the revenue jurisdiction of the district within which the lands which form the subject of a scheme under this Act, or the greater portion of such lands, are situate. If any doubt arises as to whether the greater portion of the lands is situate within one of two or more districts, the Board of Revenue shall decide the point, and such decision shall be final :

‘The Commissioners’ mean the Drainage Commissioners to be appointed under this Act :

‘Estate’ means land included under one entry in the General Registers of revenue-paying lands, and revenue-free lands, prepared and maintained under the law for the time being in force by any Collector of a district, or a share of, or interest in, such land :

‘Proprietor’ means a person who as owner is solely or jointly in possession of an estate :

‘Tenure.’ ‘Tenure’ means—

(1) a permanent rent-paying interest in land immediately subordinate to that of a proprietor, and superior to that of a ryot, extending to not less than one hundred standard bighas affected or to be affected by any works under this Act ;

(2) a permanent revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists no rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest :

‘Undertenure.’ ‘Undertenure’ means—

(1) a permanent rent-paying interest in land subordinate

to that of a tenure-holder and superior to that of a ryot, extending to not less than one hundred standard bighas affected or to be affected by any works under this Act ;

(2) a revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists a rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest.

EXPLANATION.—The term ‘ permanent ’ is used with reference to the tenure or undertenure itself, and not with reference to the person who happens to hold such tenure or undertenure for the time being. A tenure or undertenure is none the less permanent although held by a Hindu widow, a Sebait, or a person subject to the Mitakshara law.

‘ Landholder ’ and ‘ Landholder ’ and ‘ Holder of land ’
‘ Holder of Land.’ mean—

(1) any person who as owner of an estate is solely or jointly in possession thereof ;

(2) any person who as owner of a tenure or undertenure is solely or jointly in possession thereof :

Where two or more persons are joint landholders they shall be jointly and severally liable under this Act, except as is otherwise expressly provided herein.

‘ Reclaimed land ’ means land which was unfit for cultivation before the execution of any works under this Act, but which has been rendered productive by such works :

‘ Improved land ’ means land which was more or less fit for cultivation before the execution of any works under this Act, but of which the productive powers have been increased by such works :

‘ Part ’ and ‘ Section ’ mean respectively a part and section of this Act.

PART I.

APPOINTMENT OF COMMISSIONERS AND CONDUCT OF BUSINESS.

4. Whenever it appears expedient to the Lieutenant-Governor to carry out any scheme and plans for the drainage and improvement of any tract of land, the Lieutenant-Governor may appoint
Lieutenant-Governor to appoint Commissioners.

any number of persons, not less than seven, of whom the majority shall be qualified by being holders of lands to be affected by the works mentioned in the said scheme and plans, or managers on behalf of such holders, to be Drainage Commissioners for carrying out the provisions of this Act,

and the Lieutenant-Governor may from time to time remove or accept the resignation of any such Commissioner, or may add to the number of the Commissioners, and may appoint another person in the place of any such Commissioner dying, resigning, being removed, or ceasing to reside in the district in which such lands are situate, but so as that the majority of the Commissioners shall always be persons qualified as aforesaid.

No act done or proceeding taken by the Commissioners shall be invalid merely on the ground that at the time of doing such act or of taking such proceeding, the majority of the Commissioners were not persons qualified as aforesaid.

5. The Lieutenant-Governor shall from time to time appoint one of the persons so appointed Commissioners as aforesaid to be Chairman of the Commissioners, and may at any time, if he see fit, revoke such appointment and appoint another of such persons to be Chairman. The Commissioners may sue and be sued in the name of their Chairman.

6. The Commissioners shall ordinarily meet for the transaction of business once at least in every quarter. Such meeting shall be held upon such day and at such hour as the Commissioners shall from time to time determine. No business shall be transacted at any meeting unless at least three members are present at the commencement and close of such business.

7. The Chairman of the Commissioners may, whenever he thinks fit, and shall, upon request made in writing by three of the Commissioners, call an extraordinary meeting of the Commissioners.

8. The Chairman shall preside at every meeting of the Commissioners, but in case of his absence at the time appointed for holding a meeting, the Commissioners

Lieutenant-Governor to appoint Chairman. Commissioners may sue and be sued in his name.

Meetings of Commissioners and quorum.

Extraordinary meetings.

Presidency of meetings.

present may choose one of their number to be President of such meeting.

9. (1)—All questions at any meeting, including the question of adjourning such meeting, shall be decided by a majority of votes of the members present. In case of an equality of votes the President for the time being of such meeting shall have a second or casting vote.

(2)—The Commissioners may delegate any of their powers to Committees consisting of such member or members of the body as they think fit. Any Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Commissioners.

(3)—A Committee may elect a Chairman at their meetings. If no Chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be Chairman of the same.

(4)—A Committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the Chairman shall have a second or casting vote.

10. The Chairman of the Commissioners may by an order in writing appoint and dismiss such servants and officers, other than Engineers and their subordinates, as may be required for the purposes of this Act, and he may control them as he shall see fit. There shall be paid to such servants and officers respectively such salaries as may appear to the Commissioners to be proper.

When objects of their appointment fulfilled, Lieutenant-Governor may direct Commissioners' powers and functions to cease.

11. The Lieutenant-Governor may, when satisfied that the objects of their appointment have been fulfilled, direct that the powers and functions of the Commissioners shall cease.

PART II.

DRAINAGE SCHEME.

12. The Commissioners shall, within three months after their appointment, cause a notification in the language of the district to be published by beat of drum in every village in which may be situate any portion of the lands to be affected by the works proposed in such scheme and plans. Every such notification shall be in the form in Schedule (A) hereto annexed, and shall further be published by posting the same at the office of the Collector and of the Subdivisional Officer and in some conspicuous part of the village aforesaid, and at the Court of the Moonsiff within whose jurisdiction, and at the thana within the limits of which, such village is situate.

13. After the date named in such notification, a list of the persons who may have given their assent or made any objection in writing in accordance with such notification shall be prepared and published in the manner provided in section 12 for the information of all concerned. Such list shall contain a specification of the land in respect of which such persons claim to vote as landholders, and of the titles in virtue of which they claim to vote respectively : and there shall be appended thereto a notice that objections to the right of voting so claimed must be lodged with the Commissioners within one month after the publication of the said list.

14. (1)—The Commissioners may, at some meeting to be held not less than one month after such list has been published under the provisions of section 13, proceed to ascertain whether the holders of half of the lands to be reclaimed or improved have assented in writing to the adoption of the scheme. For the purpose of so ascertaining the Commissioners shall take into account the vote of not more than one landholder in respect of any one portion of the area affected, and whenever more than one landholder shall have given his vote in respect of the same portion of such area, the Commissioners shall take into

resubmit such portion of the scheme to the Lieutenant-Governor, and may, with his approval, proceed thereupon in manner aforesaid.

19. If the Commissioners adopt such scheme, plans, and estimates, or any modification or alteration thereof, they shall, within one month after such scheme, plans, and estimates, or some modification or alteration thereof, have been adopted by them, cause the same to be laid before the Lieutenant-Governor, and the Lieutenant-Governor may sanction the scheme, plans, and estimates so adopted, or any portion thereof, as to him shall seem fit.

20. (1)—The Commissioners may, with the previous assent of the Lieutenant-Governor, at any time reconsider any scheme, plans, or estimates adopted by them, and add to, alter, or modify the same;

and when any addition, alteration, or modification has been adopted by them, they shall cause the same to be laid before the Lieutenant-Governor:

the Lieutenant-Governor may sanction such addition, alteration, or modification, or any portion thereof, as he may think fit.

and thenceforth the provisions of this Act shall apply to such addition, alteration, or modification, as if it had been a portion of the original scheme, plans, or estimates; and every such addition, alteration, or modification, after it has been adopted, shall be published by the Commissioners as to them shall seem fit.

No such addition, alteration, or modification shall be adopted at a meeting at which the majority of the members present are not qualified as provided by section 4.

(2)—No addition, alteration, or modification under clause (1) to or of any scheme which affects any lands other than those which would be affected by some scheme theretofore published, shall be adopted by the Commissioners until the same has been published for not less than fifteen days, according to the provisions of section 12, in every village in which may be situate any portion of the lands to be affected by such addition, alteration, or

modification ; nor shall any such addition, alteration, or modification be adopted unless the landholders of not less than half the entire area to be affected by the scheme as so added to, altered or modified, assent to the same.

21. When the Lieutenant-Governor has sanctioned any scheme, plans, and estimates as aforesaid, or some portion thereof, he may direct proceedings to be taken under the provisions of "The Land Acquisition Act, 1870," or any other law for the time being in force for the acquisition of land for public purposes, in order to obtain any land likely to be required for the works mentioned in such sanctioned scheme, plans, and estimates, or any portion thereof.

22. The Lieutenant-Governor may, if he thinks fit, order the works specified in such sanctioned scheme, plans, and estimates, or portion thereof, to be executed by an officer to be thereunto appointed by the Lieutenant-Governor, and may, subject to the sanction of the Governor-General of India in Council order the advance from the Public Funds of such sum of money as may be required for the purpose of making such improvements, and such officer may cause the works specified in such scheme and plans to be executed, and for that purpose may, by himself, his agents and workmen, enter into or upon any lands and perform such works thereupon as may be required.

23. The Lieutenant-Governor may at any time after the said works have been commenced by an order sanction any alteration or modification of such scheme or plan suggested to him by the officer in charge of such works, if after communication with the Commissioners it shall appear to him that by such alteration or modification the general character and scope of the scheme will not be altered, nor greater expenditure incurred thereon, than would be incurred in the scheme as originally sanctioned ; and after such sanction, such alteration or modification shall be taken to be a portion of the scheme adopted by the Commissioners in substitution for the portion of such scheme thereby altered, and every such alteration or modification shall be published by the Commissioners as to them shall seem fit.

24. (1)—Any person who alleges that damage has been

Claims to compensation for damage caused in carrying out scheme or works.

caused to his property by any scheme or works commenced or carried out under this Act may, at any time before the expiry of the three years men-

tioned in clause (1) of section 28, prefer to the Commissioners a claim for compensation in respect of such damage actually caused, and of all future damage likely to be caused to such property by such scheme or works.

The Commissioners shall duly consider any such claim ;

Compensation to be assessed by the Commissioners.

and if they are satisfied that such damage has been caused or is likely to be caused, they shall assess such

compensation as to them appears fair and reasonable.

If such person agrees to accept the amount so assessed, the same shall be paid to him :

Reference to Civil Court if amount assessed be not accepted.

If he do not agree to accept such amount, the Commissioners shall make

a reference to the Civil Court in the manner in which a Collector is empowered to make a reference by section 15 of " The Land Acquisition Act, 1870," and the provisions of Part III of the said Act shall apply to any reference so made.

(2)—When the persons interested in such property, to

Reference to Civil Court where amount of compensation agreed to or settled by Court, but dispute as to its apportionment.

which damage has been caused as aforesaid, agree to accept the amount of compensation assessed by the Commissioners, but a dispute arises as to the apportionment of the same or any part thereof, or when the amount of

compensation has been settled by the Court on a reference under clause (1) of this section, and a similar dispute arises, the Commissioners shall refer such dispute to the decision of the Civil Court, and the provisions of Part IV of the said Land Acquisition Act shall apply to any reference so made.

(3)—When the amount of compensation assessed by the

Reference may in certain cases be transferred to Subordinate Judge or Munsif for disposal.

Commissioners does not exceed one thousand rupees, any reference made under the said clause (1) may be transferred by the Principal Civil Court of original jurisdiction of the district to

any Subordinate Judge in the same district, and such Subordinate Judge shall have power to hear and dispose of

the same; and any reference made under clause (2) of this section may be transferred by such Principal Civil Court to any Munsif in the same district, and such Munsif shall have power to hear and dispose of the same.

PART III.

EXPENDITURE AND APPORTIONMENT.

25. All amounts paid as compensation for any lands taken for the purposes of this Act, or for damage inflicted in carrying out any scheme or works under this Act, or as salaries of officers, servants, or establishments, or for surveys or valuations (whether antecedent or subsequent to the preparation of the scheme and plans), and all amounts otherwise duly expended in carrying out the purposes of this Act, shall be included in, and deemed to constitute the cost of, construction of the works, and may be defrayed by advances from the Public Funds as provided by section 22.

26. (1)—All such advances shall bear interest at the rate of five per centum per annum until recovered in the manner hereafter in this Act provided. All such interest, which falls due before the completion of the works is certified to the Commissioners as hereafter provided, shall, upon such completion being so certified, be added to the total amount of the principal sums advanced; and interest at the rate of five per centum per annum upon the total of such interest and principal shall thereafter be payable to the Collector half-yearly by the holders of the lands affected by the works.

(2)—It shall be the duty of the Commissioners to distribute the liability to pay such half-yearly interest amongst such landholders, as soon as the completion of the works has been certified to them, and to report the details of such distribution to the Collector.

Cost of compensation, &c., to be deemed part of expense of construction. Such expense may be defrayed by advances from the Public Funds.

Interest to be paid on such advances. Such interest after completion of the works to be payable half-yearly to Collector by the holders of the lands affected.

Commissioners to distribute liability to pay interest amongst landholders and certify same to the Collector.

(3)—In order to the distribution of such liability, the Commissioners shall have regard to

How the liability to pay interest is to be distributed.

the plans and estimates of the scheme and to such other information as may be supplied to them by the Officer in charge of such works, and shall distribute the liability in a general way, so that the share of the interest payable by the holders of each estate, tenure, or undertenure from whom any sum is made payable shall be in proportion to the benefit to be derived by the lands of such holders, so far as the Commissioners can judge of such proportions.

(4)—Notices shall be served upon such holders setting

Notice of amount of interest payable half-yearly to be served on each landholder. Amount, if not paid, recoverable as a Public Demand.

forth the half-yearly amount of interest payable by them and the date upon which it is payable. Where two or more persons are joint holders of an estate, tenure, or undertenure, service of notice under this clause on any one such person shall be deemed to be good and sufficient service on each and all of such persons. If such half-yearly amount be not paid upon such date, the Collector may proceed for its recovery according to the law for the time being in force for the recovery of Public Demands.

27. The Officer in charge of the said works shall, until the same shall be finally completed,

Reports to be made and expenditure certified.

once in every three months, make a detailed report to the Commissioners of the progress of such works and the expenditure thereupon from the day up to which the next preceding report shall have been brought down; and the Examiner of Public Works Accounts to the Government of Bengal, or some other officer authorized in that behalf by the Lieutenant-Governor, shall from time to time certify the sums advanced in accordance with the provisions of section 25, and the dates of such advances, and every such certificate shall be final and conclusive evidence in a Civil Court, or in any proceedings under this Act, of the sums therein stated to have been advanced having been so advanced, and of the dates upon which they were respectively so advanced.

28. (1)—The Officer in charge of the works shall, as

Commissioners upon expiry of three years from Completion Report to classify lands benefited by the works, distinguishing between Improved lands and Reclaimed lands.

soon as they have been completed, certify such completion to the Commissioners; and the Commissioners shall, upon the expiry of three years from such completion being so certified to them, proceed to classify all the lands benefited by the works

according to the degree of benefit conferred; and in such classification they shall distinguish the Improved lands from the Reclaimed lands:

It shall be lawful for the Commissioners, at any time during such three years, to make such inspections of the lands and such surveys thereof, and otherwise to collect such information, as shall in their opinion conduce to the making of such classification, and of the apportionment hereinafter mentioned.

(2)—The Commissioners shall, after making such classification, proceed further to apportion

Cost of construction with interest to be apportioned upon the Improved lands and Reclaimed lands.

the total cost of construction, together with the interest mentioned in section 26, upon the Improved lands and Reclaimed lands, and shall draw up

a statement showing the amount payable to the Collector by each landholder—

(a) in respect of his Improved lands, if any; and

(b) in respect of his Reclaimed lands, if any.

In making this Apportionment the Commissioners shall,

Amount payable for the Improved lands not to exceed value of improvement.

as far as may be possible, make payable in respect of each plot or field of Improved land a sum not exceeding the amount of the increased capital-ized value, which, in the opinion of the Commissioners,

has been conferred on such land by the works.

29. If, upon the completion of the Apportionment

under section 28, it shall be found that any landholder has, under the provisions of section 26, paid more or less interest than he would have been

Adjustment of excess or deficient payments of interest.

required to pay according to the proportions adopted in the apportionment under clause (2) of section 28, if such apportionment had then been in force, the Commissioners

shall direct such refunds to be made or such additional amounts to be levied as shall be necessary to bring the payments of all the landholders concerned into conformity with such proportions.

30. Whenever any land, in respect of which any sum is apportioned as payable under the provisions of section 26 or 28, forms part of a tenure, or of a tenure and of an undertenure, it shall be lawful for the Commissioners to declare whether the holders of the estate, of the tenure, or of the undertenure, shall be deemed to be the landholders liable to pay to the Collector the sum apportioned as payable in respect of such land.

31. The total sum so made payable in respect of the Improved lands of any one landholder, and the total sum so made payable in respect of the Reclaimed lands of any one landholder, with interest upon such sums at five per centum per annum from the date of Apportionment, and any interest payable under section 29, and any interest payable under clause (1) of section 26, but not paid or recovered before the apportionment under section 28, shall be a first charge upon such Improved lands and upon such Reclaimed lands respectively. Such charge shall not be avoided by the sale of such lands or of any estate, tenure, or undertenure within which they are included for arrears of revenue or rent.

32. The Commissioners shall, so soon as conveniently may be, after having apportioned the sums to be payable by the holders of the lands of any village respectively, make and publish a Report describing the several lands in respect of which they have declared such sums to be payable, the names of the respective holders thereof who have been made liable to pay the same to the Collector, and the sum payable by each in respect of the same. Every such Report shall distinguish between the Reclaimed lands and the Improved lands, and shall classify the latter according to the extent of the improvement. A copy of such report

When the land is part of a tenure, &c., Commissioners may declare who shall be deemed liable as landholders

Amounts made payable to be a charge upon the Improved lands and Reclaimed lands respectively. Secretary of State for India in Council to have a perpetual lien for their recovery.

Commissioners to report Apportionment.

shall be sent through the Collector to the Commissioner of the Division for confirmation by such Commissioner.

33. If the Commissioners shall, for the space of three

In default of Commissioners, officer appointed by Lieutenant-Governor to make Apportionment and Report.

months after the completion of the entire works has been certified to them as aforesaid, neglect or refuse to proceed with the Apportionment of the sums payable as aforesaid, or to make such Report as aforesaid, or for

the space of two months after any Report and Apportionment shall have been returned to them for further consideration and revision under the provisions hereinafter contained, neglect or refuse to proceed to such further consideration and revision as is required, the Collector may serve them with a notice requiring them to proceed as aforesaid: and if for one month after service of such notice they neglect so to proceed, the Lieutenant-Governor may appoint such officer or officers as to him shall seem fit to make or consider and revise such Apportionment and Report, and to do all or any of the subsequent acts which the Commissioners are hereby required or empowered to do in respect of such Apportionment and Report; and every Apportionment and Report so made or revised and every such act so done shall have the same force and effect as if the same had been made, revised, or done by the Commissioners.

34. Whenever any Apportionment and Report have

Report to be published. been made in pursuance of the provisions hereinbefore contained, the

Commissioners shall cause such Report to be published by affixing in every village in which any lands mentioned therein are situate a copy of so much thereof as relates to such lands, and also a like copy at the office of the Collector and of the Subdivisional Officer, and at every Munsif's Court within whose jurisdiction, and at every police thana within the limits of which, such village, or any part thereof, is situate. The fact of such Apportionment and Report having been made, and such copies having been affixed, shall also be notified by beat of drum in every such village.

35. Any person who may deem himself to be aggrieved

Appeal against Apportionment.

by any such Apportionment may, within one month after such Report has been published, prefer an objection

(c) by letting in farm or managing by himself or another the whole or any part of such Improved lands or Reclaimed lands ; or

(d) partly by one of such modes and partly by another or others of them.

For the purposes of this section, the Collector may exercise all the powers of the owner of such Improved or Reclaimed lands : and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

40. In case the Collector certifies that any sum payable as hereinbefore provided cannot be realized as provided by section 38 or 39, so much of such sum as shall not have been so realized shall be a charge upon any profits that may accrue from the property vested in the Collector under the provisions of section 47.

41. Any landholder who has entered into an engagement for the repayment of any sum apporportioned as aforesaid may at any time repay to the Collector the entire amount of the principal sum which shall be then remaining due, and interest thereupon up to the day of payment, and thenceforth the said engagement shall be terminated and all liabilities in respect thereof for principal or interest shall determine.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COST OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

42. Every landholder who has been charged with any sum by a Report published as aforesaid may, after he has paid or engaged to pay the same—

Proprietor may recover from subordinate tenants.

(a) proceed under any law for the time being in force to enhance the rents of any person holding immediately from him any land, the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (b) of this section : or

(b) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest at the rate of five per centum per annum from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable, and which have been benefited by any scheme or works carried out under this Act.

(c) The sum recoverable by such landholder from each such person under clause (b) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

43. Any superior tenant, who has made any payment to a landholder under the provisions of clause (b) of section 42, may

(a) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (b) of this section: or

(b) recover the sum or part of the sum which has been so paid by him according to the proportions and subject to the rules laid down in clause (c) of section 42, with interest at the rate of five per centum per annum from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made, and which have been benefited by any scheme or works carried out under this Act.

44. (1)—The sum payable to a landholder or superior tenant in any one year under clause (b) of section 42 or under clause (b) of section 43 shall be payable by equal instalments upon the days appointed for the payment to

Mode and time of payment.

such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

(2)—If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such person shall pay, such landholder or superior tenant may serve such person through the Collector with a notice setting forth the amount which he claims, and requiring such person, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

(3)—If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable with interest at five per centum per annum. If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final. The Collector may direct that any sum of money payable under his decision, together with any cost awarded by him, be paid by instalments extending over a period of not more than ten years. The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

45. No person from whom any sum has been recovered under clause (b) of section 42 or under clause (b) of section 43 shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

Proviso.

PART VI.

MISCELLANEOUS.

46. All outlets and water-channels, natural or artificial, which shall be altered, enlarged, excavated, or cut under the provisions of this Act, and the construction and maintenance of embankments and of dams and works

Drainage works to be subject to the laws relating to embankments.

therein or connected therewith shall, save as hereinafter provided, be subject to the law for the time being in force regulating the construction and maintenance of public embankments and public rivers, channels, and outlets.

47. All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all works constructed under the provisions of this Act, as well as all outlets, water-channels, embankments, and dams so constructed, altered, enlarged, excavated or cut, shall be vested in the Collector of the district for the time being on behalf of the Secretary of State for India in order to effectuate and maintain the objects of this Act; and, to assist the Collector in the management of the same, the Lieutenant-Governor may appoint, or authorize the election, by the landholders aforesaid, of a committee consisting of not less than four or more than six persons, being themselves holders of the lands reclaimed or improved.

48. (1)—The expense of keeping in efficient order and repair any improvements or works effected under this Act shall be charged to the profits from the property vested in the Collector under section 47, and if such profits shall not suffice, the balance shall be paid to the Collector in the proportions of the original contributions by the holders for the time being of the land which have been benefited by such works; and all sums payable to the Collector under the provisions of this section shall be recoverable in the manner provided by section 38, or in the manner provided by section 39, and every proprietor or other person who has paid any such sum may recover the same, or any part of the same, in the proportion and subject to the rules laid down in section 42 or 43, as the case may be.

(2)—Any such amount as is specified in section 25 which from oversight or other cause has been omitted from the Apportionment and Report made under section 32 or section 33 may be charged and recovered under the provisions of clause (1) of this section.

(3)—If on the first day of January next before the last instalments payable under the provisions of section 36 are due, there is,

Surplus profits from property vested in Collector under section 47 to be appropriated to payment of debt to Government.

after providing for the expense of keeping in efficient order and repair the improvements and works executed under this Act, a surplus of the profits from the property vested in the Collector under section 47, such surplus or as much thereof as will suffice shall be appropriated to the liquidation of the said last instalments. Any landholder who has paid any such instalment in advance under the provisions of section 41 shall be entitled to a refund in proportion with interest at 5 per cent. per annum.

(4)—The Lieutenant-Governor may at any time, in his

discretion, direct that the total average annual expense, which over and above such profits as aforesaid is necessary to keep such improvements and works in efficient order and repair, be estimated, and that there be levied from such landholders in lieu of all future contributions to the maintenance of such improvements and works, such amount as being invested in Government securities at the current rate of interest shall yield a sum equal to such average annual expense. The provisions of sections 31, 38, and 39 shall apply to such capitalized amount.

Cost of maintenance may be capitalized, and the capitalized amount levied.

49. The Commissioners, the Commissioner of the Division, and every officer appointed by the Lieutenant-Governor under section 33 shall have the powers conferred on Civil Courts by the Code of Civil Procedure for compelling the attendance of witnesses and the production of evidence and for examining witnesses in any enquiry or appeal which they or he may be empowered to make or entertain under the provisions of this Act.

Powers for taking evidence.

50. Any land held free of rent or revenue, being less than one hundred standard bighas in extent, and not being a property entered on the Collector's General Register of revenue-free lands, may, for the purposes of this Act, be deemed to form a tenure or undertenure held immediately from some landholder, and the Commissioners

Rent-free lands may be deemed subordinate tenures.

than one hundred standard bighas in extent, and not being a property entered on the Collector's General

Register of revenue-free lands, may, for the purposes of this Act, be deemed to form a tenure or undertenure held immediately from some landholder, and the Commissioners

shall determine who shall be deemed to be the landholder in respect of such tenure ; provided that any holder of such land, who may deposit the cost of survey of his land at a rate to be approved by the Commissioners and calculated on the area claimed by him, shall be entitled to be deemed a landholder in respect of such lands within the meaning of this Act.

51. Wherever any land as mentioned in the last preceding section shall be deemed to form a tenure or undertenure held immediately from a landholder as therein provided, every sum payable to the landholder in respect of such land in any one year shall be payable in two equal instalments on such dates as the Commissioner of the Division may fix. Such Commissioner shall cause due notice to be given in the villages concerned of the dates so fixed by him.

52. All notices under this Act required to be served may be served by delivering the same to the person to be served, or by posting the same upon the door of his dwelling-house, or if such person cannot be found and his dwelling-house is not known, then by posting the same on some conspicuous part of the land to which such notice relates, and copies thereof at the Munsif's Court within whose jurisdiction, and the police thana within the limits of which, such land is situate.

53. No proceeding under this Act shall be defeated or invalidated by reason of any defect in the number of property of assenting landholders, nor by any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission ; and every order and report of the Commissioners, of the Collector, and of any officer appointed by the Lieutenant-Governor under section 33 shall be conclusive evidence that all notifications and notices hereby required as preliminary thereunto had been duly published and served, and that all other preliminaries thereunto had been duly performed, and, save as is hereinbefore provided, shall be final and conclusive.

54. The Lieutenant-Governor may by an order in writing direct that any portion of a scheme adopted and ordered to be executed under this Act shall, for the purposes of this Act or for any such purposes, be deemed to be a separate scheme.

55. The Lieutenant-Governor may specially empower any person to do all or any acts, to discharge all or any functions, and to exercise all or any powers which may be done, discharged, or exercised by a Collector under this Act, and on any person being so specially empowered, such person may do all or any of such acts, discharge all or any of such functions, and exercise all or any of such powers, and such person shall be deemed to be the Collector for the purposes of the scheme in respect of which he is so specially empowered.

56. The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy, Assistant, or Sub-Deputy Collector, or to any similar officer, the performance of any acts and the discharge of any functions which the said Collector may perform or discharge under this Act ;

and upon such delegation such Deputy Collector or other officer may do any such acts and discharge any such functions ;

and may exercise any powers for the performance of the same, which the Collector may exercise under this Act ;

Provided that all acts done, functions discharged, and powers exercised by such officer, shall be done, discharged, or exercised subject to the control and supervision of the Collector.

57. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division.

58. The Lieutenant-Governor may from time to time make rules to regulate the following matters :—

Power to make, alter, and cancel rules.

(a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(b) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(c) and generally to carry out the provisions in this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Such rules, alterations, and cancelment shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law.

Publication of rules.

PART VII.

SPECIAL PROVISIONS FOR WORKS CARRIED OUT UNDER BENGAL ACT V OF 1871.

Portions of this Act applicable to works carried out under Bengal Act V of 1871.

59. The following portions of this Act shall apply to any scheme or works carried out under the provisions of Bengal Act V of 1871, that is to say—

(a) As to the method of realizing sums due on account of the cost of the works, sections 31, 38, 39 and 40.

(b) As to the recovery by landholders or superior tenants of the cost of the works, from persons holding land under them, Part V.

(c) As to other matters, Part VI.

60. If the Lieutenant - Governor is satisfied that the apportionment of the cost of any scheme of works carried out under the provisions of Bengal Act V of 1871 is inequitable for reasons discovered by the operation of the completed scheme, or on grounds not originally considered by the Commissioners, the Lieutenant-Governor may, at any time within one year after the commencement of this Act, direct a revision of the said apportionment, and may for the purpose of such revision appoint Commissioners. The provisions of Part I shall be applicable to the appointment of, and to the conduct of business by, such Commissioners.

61. Such Commissioners shall proceed without delay to revise such apportionment, and in making such revision they shall be guided by the provisions of sections 32, and 34, so far as the same may

Commissioners to be guided in making such revision by certain provisions of this Act.

be applicable, and shall have regard to the degree of benefit which, upon taking proceedings under this section, they may find to have been conferred on the lands: provided that the total sum apportioned upon such revision as payable in respect of all the lands improved or reclaimed by the works shall not be less than the total costs of the construction of such works within the meaning of section 25.

62. For the purpose of making such revised apportionment, such Commissioners shall have Commissioners may increase or reduce apportionment. full power to increase or reduce the apportionment which was previously made upon individuals, and to direct such refunds to be made to, or additional payments to be levied from, individuals, as may be necessary to give full and complete effect to such revision. Any person dissatisfied with any order passed by such Commissioners under this section may appeal to the Commissioner of the Division, and the provisions of section 35 shall be applicable to any such appeal.

63. The provisions of section 36 as to an apportionment becoming final, shall be applicable to such revised apportionment; and the provisions of sections 31, 38, 39, and 40 shall be applicable to the realization of any sums which may become payable under the same.

Finality of revised apportionment.
Realization of sums due thereunder.

SCHEDULE A—(*referred to in section 12*).

BENGAL DRAINAGE ACT, 1880.

To all whom it may concern.

TAKE notice that it is proposed to drain and improv certain lands in the village of , parganah Plans and provisional estimates of the works proposed are now lodged in and may be inspected by any person interested on any (the days and at any of the times specified below till the day of next. (*Here specify the days and hours at which the plans and the estimates will be open inspection.*)

All proprietors of estates paying revenue direct to Government, of which any lands may be affected by the proposed drainage and improvement,

all owners of revenue-free lands borne on the Collector's General Register of revenue-free lands, which may be so affected,

all persons having permanent rent-paying interests in tenures, undertenures, or lands extending to not less than one hundred standard bighas to be so affected,

and all persons having permanent rent-free interests in tenures, undertenures, and lands to be so affected,

are hereby called upon to inspect the said plans and estimates.

Those who wish the works to be carried out and are willing to bear their proportion of the cost thereof are requested to send to the Drainage Commissioners their assent in writing, signifying therein, so far as possible, the nature and extent of their interest in such land, on or before the day of 18 . Those who have any objection to the execution of the said works are required to send in their objection in writing to the said Commissioners on or before the said day.

All persons who are hereby called upon to give their assent or express their objections in writing are warned that, under the law, the Commissioners are not bound to recognize any such assent or objection unless the person making the same specifies the extent and portion of the land which he holds, and the tenure or interest which he has in the same.

Collector,

for the Drainage Commissioners.

SCHEDULE B—(*referred to in section 37*).

BENGAL DRAINAGE ACT, 1880.

To

Take notice that the Drainage Commissioners have apportioned against you the sum of as your contribution in respect of the lands of , and that you are hereby required, within one month from

the date of the service of this notice, to pay to me the said sum of Rs. , together with interest at the rate of five per centum per annum from the day of , or to enter into an engagement for the payment of the same by instalments extending over a period of not more than ten years.

Collector.

PART VI.

Embankments.

ACT No. 11 (B. C.) OF 1882.

An Act to amend the law relating to Embankments and Watercourses.

WHEREAS it is expedient to make better provision for
 Preamble. the construction, maintenance, and
 management of embankments and
 watercourses in the territories subject to the Lieutenant-Governor of Bengal: It is enacted as follows:—

The public duty of maintaining ancient tanks, and of constructing new ones, was originally undertaken by the Government of India, and, upon the settlement of the country has, in many instances, devolved upon zemindars. Such zemindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. The rights and liabilities of such zemindars with regard to their tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. Such a zemindar, if the banks of any tank in his possession are washed away by an extraordinary flood without negligence on his part, is not liable for damage occasioned thereby. *Wither v. The North Kent Railway Co.*, 27 L. J., Ex., 417, approved. 14 B. L. R., 209.

The principle that a man, in exercising a right which belongs to him, may be liable, without negligence, for injury done to another person, has been held inapplicable to rights conferred by statute. This distinction was acted upon in *Vaughan v. The Taff Vale Railway Co.* (5 H. and N., 679), where it was held by the Exchequer Chamber that a Railway Company were not responsible for damage from fire kindled by sparks from their locomotive engine, in the absence of negligence,

because they were authorized to use locomotive engines by statute. Cockburn, C. J., observes: "When the legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the legislature carries with it this consequence, that if damages result from the use of such a thing independently of negligence, the party using it is not responsible." On the same principle it was decided that a waterworks company laying down pipes by a statutory power, was not liable for damages occasioned by water escaping in consequence of a fire-plug being forced out of its place by a frost of unusual severity. *Blyth v. The Birmingham Water-Works Co.*, 25 L. J., Ex., 212.

Zemindars are obliged to keep up certain tanks, just as Government are obliged to maintain certain embankments. Neither can rid themselves at their pleasure of the obligation. In the case of *Rylands v. Fletcher* (L. R., 3 H. L., 330), the defendants, for their own purposes, brought upon their land and there accumulated a large quantity of water by what is termed by Lord Cairns "a non-natural use" of their land. They were under no obligation, public or private, to make or to maintain the reservoir; no rights in it had been acquired by other persons; and they could have removed it if they had thought fit.

In the above case their Lordships of the Privy Council said: "The rights and liabilities of the defendant appear much more analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. The duty of the defendant to maintain the tank is analogous to the duty of the railway company to maintain their railway. Neither would be liable for damage occasioned by the banks of the tank or of the railway being washed away by an extraordinary flood without negligence on the part of either. See case of *Wither v. The North Kent Railway Co.*, 27 L. J., Ex., 417.

PART I.

Preliminary.

Short title.

1. This Act may be called "The Bengal Embankment Act, 1882."

It extends to the whole of the territories subject to the Lieutenant-Governor of Bengal, except the Sunderbuns, as defined under

Local extent.

the provisions of clause 2, section 13, Regulation III of 1828, and the Provinces of Orissa, save as otherwise expressly provided in Part IX.

And it shall come into force from the day on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Commencement.

as may be chargeable to the works in accordance with the rule for the time being in force under this Act, or as may be specially ordered by the Lieutenant-Governor, together with such plans and specifications of the same as may be required. He shall also cause to be prepared from the survey map of the district a map showing the boundaries of the lands likely to be affected by the said acts and works, and he shall cause a general notice to be given of his intention to cause such works to be executed.

8. Such general notice shall, as far as possible, be in the form, and state the particulars mentioned, in Schedule III to this Act annexed; and to it shall be annexed a list of all estates and villages, as far as is known, which are likely to be chargeable in respect of the expenses of executing the same; and a copy of the said estimates, specifications, and plans, together with a copy of the map as aforesaid, shall be deposited in the office of the Collector, and shall be open to the inspection of any persons interested, who shall be allowed to take copies thereof.

9. Every such general notice shall be published in the manner provided by section 80 not less than thirty days before the day appointed for hearing the persons interested.

10. The Collector shall, on the day appointed for the hearing, or on any subsequent day to which the hearing may be adjourned, hold an enquiry and hear the objections of any persons who may appear, recording such evidence as he may deem necessary.

11. After holding such enquiry the Collector shall proceed as follows, that is to say—

(a) If he considers that the proposed act or work, or any modification of the same, should not be done or executed, he shall record his opinion to that effect.

(b) If he considers that the proposed act or work, or any modification of it, should be done or executed, he shall submit a report to the Commissioner of the Division.

12. On receipt of a report submitted under section 11, the Commissioner, after making any further enquiry which he may deem

necessary, may record an order refusing to support the proposal made in the report of such Collector for the execution of such work ;

or may forward the report submitted by such Collector, together with any remarks he may think proper, for the consideration of the Board of Revenue.

13. On receipt of the report forwarded by the Commissioner, the Board of Revenue, after

Order of Board.

making any further enquiry which they may deem necessary, may record an order refusing to support the proposal made in the report of such Collector or Commissioner,

or may submit such report, together with any remarks which may be thought proper, for the consideration of the Lieutenant-Governor.

14. On receipt of such report from the Board the Lieutenant-Governor shall proceed to

Order of Lieutenant-Governor.

consider the same, and may order that the proposed act or the proposed work, or any modification thereof, be done or executed. Every such order shall be notified in the *Calcutta Gazette*.

15. Notwithstanding anything contained in this Part, the Lieutenant-Governor may, by a

Special powers which may be conferred by Lieutenant-Governor.

special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorize the Collector, after holding such enquiry as is prescribed in section 10, without previous reference to any superior authority to pass an order that such act or work or any modification thereof may be done or executed ; or the Lieutenant-Governor may authorize the Commissioner or the Board of Revenue to pass such order without previous reference to any superior authority :

Provided that every order passed under the authorization of the Lieutenant-Governor given under this section, shall be subject to the provisions of section 85.

16. The Collector may make an order requiring that

Alteration of rail-roads and construction of watercourse.

any railroad which interferes with the drainage of any tract of land be altered, or that any watercourse under or through such railroad be constructed.

17. Whenever an order shall have been passed in cases falling under section 7, clause (5), or under the section last preceding, directing that any road or railroad which interferes with the drainage of any tract of land be altered, or that any watercourse be constructed under or through such road or railroad, the Collector may require the person in charge of such road or railroad to make such alteration or construct such watercourse, and in the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the Collector may cause the road or railroad to be altered or the watercourse to be constructed by the officers of Government; provided that, in the case of a railroad, no such work shall be undertaken by the officers of Government without the permission of the Lieutenant-Governor previously obtained.

The expenses of such alteration or construction shall be borne by the person in charge of the said road or railroad, so far as the same shall have been incurred on account of insufficient provision having been made at the time of the construction of the said road or railroad for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from, the proprietors of the lands benefited in accordance with the provisions of this Act. If any dispute arises as to the apportionment of expenses under this clause between the person in charge of a road or railroad and the proprietors of the lands benefited, the dispute shall be decided by the Lieutenant-Governor, whose decision shall be final.

18. (a) If any person desires that a sluice be made in any public embankment for the purpose of drainage or irrigation,
 Application for new sluices, embankments, or drainage.
 (b) or if, within any tract of country which has been included within a notification under section 6, any person desires that any new embankment be erected, that any existing embankment be lengthened, enlarged, repaired, or removed, or that the line of any embankment be altered, or that any new watercourse be made, or that any watercourse be obstructed or diverted,

he may make an application in writing to the Collector. The application shall contain such particulars of the land likely to be affected by the work as may enable the Collector to judge of the advantage which may be derived from the project. If it should appear to the Collector that the work applied for is one which may probably be executed with advantage, the procedure mentioned in the seventh and following sections of this Act shall be followed in respect of the proposed work.

19. Whenever the Collector, after considering any report of the Engineer or otherwise, shall be of opinion that the removal of any trees, houses, huts, or other buildings, situated between a public embankment and the river, is necessary, or that land is required for widening an existing embanked tow-path, or for constructing a new embanked tow-path, he shall make a report to that effect to the Commissioner, accompanied by a detailed statement of the trees, houses, huts, or other buildings to be removed, or of the land required. Such report shall be submitted in the usual manner through the Board of Revenue to the Lieutenant-Governor, in order that proceedings may be taken for obtaining possession of such trees, houses, huts, and buildings, or land in accordance with the provisions of the Land Acquisition Act, X of 1870, or other law for the time being in force for the acquisition of land for public purposes.

20. If any works proposed to be undertaken in accordance with this Act, or the lands which are likely to be affected by such works, are situated within the limits of different districts, the Collector of any district within which any portion of such works or lands is situated may apply to the Commissioner of the Division for authority to proceed in such matter; and the Commissioner of the Division, with the concurrence of any other Commissioner within whose Division any such lands are situated, may give authority to such Collector, or to any other Collector within whose district any portion of such lands is situated, to carry out all or any proceedings under this Act in respect of all the lands affected by such works.

21. The Lieutenant - Governor may, if he think fit appoint an Embankment Committee for any district, and may from time to time appoint and accept the resignation of the members of such Committee, and direct that any person shall cease to be a member thereof.

Lieutenant-Governor may appoint Embankment Committee.

22. The Lieutenant-Governor may from time to time direct that any such Committee shall be consulted by the Collector in the discharge of any function or the performance of any duty imposed on him by this Act; and by a notification published in the *Calcutta Gazette* may from time to time direct that any such function or duty shall be performed or discharged by such Committee.

Consultation of Committee by Collector.

23. The business of every such Committee shall be conducted under such rules as the Lieutenant-Governor may from time to time make in that behalf.

Business of Committee.

24. Whenever, in any matter on which the Lieutenant-Governor has directed that the Collector shall consult the Committee, the Collector may differ from the Committee, he shall, if so required by the Committee, submit the question to the Commissioner of the Division for decision, with copies of any remarks which may have been recorded by the Committee or any members thereof.

Reference to Commissioner.

PART III.

Procedure in cases of imminent danger to life or property.

25. Whenever the Collector shall be of opinion that the delay in the execution of any work, occasioned by proceedings commenced by a general notice under the seventh and following sections of this Act, would be attended with grave and imminent danger to life or property, he may forthwith cause the execution of such works to be begun in anticipation of the completion of proceedings: Provided that he shall without delay cause to be prepared the estimates, specifications, and plans of the proposed

Proceedings in emergencies.

works, together with a copy of the map as provided in section 7, and shall cause general notice to be given that the work mentioned therein has already been commenced, and thereupon such proceedings and enquiries shall be had as in and by Part II of this Act are directed.

26. Whenever it may have been determined in the final order to be passed on any such enquiry that anything done by the Collector or by the Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from the Government to be assessed according to the provisions contained in Part V of this Act, and on receipt of any application to that effect by the Collector from any such person affected, the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have been unnecessary, be, at the expense of the Government, restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this Part.

27. If any portion of the land likely to be affected by any work to be undertaken under this Part lies within another district, the Collector who causes the work to be executed shall, when commencing upon it, give notice of the same to the Collector of such other district: and provisions of section 20 shall be applicable to all proceedings connected with the work and the cost thereof.

PART IV.

Powers of the Engineer.

28. The powers conferred on the Engineer under this Act shall be exercised subject to the general control and orders of the Collector.

Engineer subject to control of Collector.

29. In cases in which the Engineer may be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the

Power to Engineer to act in urgent cases.

powers conferred on the Collector by section 25. The Engineer shall forthwith report to the Collector any action taken by him under this section, and shall be guided by instructions which he may receive from the Collector in respect thereof.

30. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public embankment, public watercourse, or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.

31. Whenever any person desires that a temporary roadway should be made over, or that a temporary watercourse should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public watercourse, he shall apply to the Engineer, or to any person who has been appointed in that behalf by the Engineer. Such Engineer or person shall communicate the application with his opinion to the Collector, and shall await the Collector's order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same without waiting for the orders of the Collector. If the proposed work is to be executed by an officer of Government, the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such roadway, or of, and incidental to, making and removing such roadway or of, and incidental to, making, closing, or removing such watercourse or dam. If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

32. Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the Engineer or of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer.

33. It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act,

Power to enter and survey land, &c. to enter upon, and survey, and take levels of any land ;
to dig or bore into the subsoil ;
to do all other acts necessary to ascertain whether the land is adapted to the purpose projected by such Engineer or by the Collector ;

Power to make outline. to set out the boundaries of the land proposed to be taken, and the intended line of the work proposed to be made thereon ;
to mark such levels, boundaries, and line, by placing marks and cutting trenches ;
and, where otherwise the survey cannot be completed or the levels taken, to cut down and

Power to clear land. clear away any part of any standing crop, fence, or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

The Engineer or other person so authorized shall, at the time of such entry, tender payment

Payment for damage. for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

34. Whenever it is deemed requisite to repair any embankment or watercourse, or embanked tow-path maintained by Government, it shall be lawful for the Engineer, or any person authorized in that behalf, to enter in and upon the lands mentioned in section 5, and take possession of, appropriate, and remove any earth or other material therefrom, and use the same for the purposes of such repairs.

35. The Collector shall proceed in respect of any crops standing on such land as provided in section 13, Bengal Act VI of 1873 :

Procedure where crops on such lands.

and the provisions of that section shall be applicable to claims for the payment of compensation for damage done to such crops.

36. When any such land is rendered permanently unfit for cultivation by any such act as made permanently unfit for cultivation. aforesaid, the Local Government shall, upon application for that purpose made by the owner thereof, acquire such lands under the provisions of the Land Acquisition Act, 1870, or other law for the time being in force for the acquisition of land for public purposes.

PART V.

Acquisition of lands and compensation.

37. Whenever, in the course of proceedings under this Act, save in those cases in which the Acquisition of land. Collector has proceeded under the provisions of sections 12 and 13, Bengal Act VI of 1873, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, X of 1870, or other law for the time being in force for the acquisition of land for public purposes.

38. Subject to the provisions of section 5, whenever Compensation for any land other than land required or consequential damage. taken by the Engineer, or any right of fishery, right of drainage, right of the use of water, or other right or property shall have been injuriously affected by any act done or any work executed under the due exercise of the powers or provisions of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Collector for compensation :

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

39. No claim under the last preceding section shall be entertained which shall be made later than two years next after the completion of the work by which such right is injuriously affected.

Limitation to claim for compensation.

40. When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible in accordance with the provisions of the Land Acquisition Act, X of 1870, or other law for the time being in force for the acquisition of land for public purposes.

Procedure for determining compensation.

41. In any such case which is referred to the Judge and Assessors for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Judge and Assessors shall take into consideration—

Matters to be considered in determining compensation.

First—the market value of the property or right injuriously affected at the time when the act was done or the work executed;

Secondly—the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right;

Thirdly—the consequent diminution of the market value of the property or right injuriously affected when the act was done or the work executed;

Fourthly—whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed, or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person.

But the Judge or Assessors shall not take into consideration—

Matters not to be considered in determining compensation.

First—the degree of urgency which has led to the act or work being done or executed; •

Secondly—any damage sustained by the claimant, which, if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

PART VI.

COST OF WORKS, PROCEEDINGS, &C.

1. *Ascertainment thereof.*

42. The provisions of section 47 and the following sections in this Part contained shall not apply to any of the embankments mentioned in Schedule (D) to Bengal Act VI of 1873 annexed, or which may be hereafter included therein, save so far as any works or repairs are executed therein or in relation thereto under the provisions of section 18 or of section 31; or to any of such embankments as may hereafter be erected for the protection of lands which at the commencement of this Act are protected by the embankments mentioned in the aforesaid schedule, save so far as the erection of such embankments may protect lands not protected by the embankments mentioned in the aforesaid schedule. All sums payable in respect of any works or repairs executed in or in relation to the embankments mentioned in the aforesaid schedule, except under the provisions of section 18 or of section 31, shall be paid by the Government.

One of the terms of a kubooliut, equally binding on the Government and a zemindar, was as follows:—"The construction of *bheries* (small embankments), the excavation of the silt of the khals, the construction of *gangura* (large embankments), &c., in connection with the salt and sweet (*i. e.*, not saline) lands of the said pergunnah, shall be made by the Government of the Honourable Company." In a suit brought by the zemindar to obtain an order upon the Government to re-excavate and clear the water-passage of a particular *khal* situate within the pergunnah, the subject of the kubooliut, *held*, that the case was not one in which the Court would decree specific performance.—I. L. R., 3 Calc., 464.

The defendant, the Collector of Midnapore, contended that Government are only bound to maintain those embankments included in Schedule D, Act VI, 1873, B. C.; that the only procedure open to the plaintiffs was that afforded in cl. 7, s. 4 of that Act. The Protabhali khal, the subject of the suit, was not mentioned specifically in the kubooliut, nor was there anything in the terms of the kubooliut itself to prevent the operation of the above-mentioned Act in respect of the plaintiffs' zemindari. The defendant further alleged that, long before the Permanent Settlement, the Protabhali khal was used as a canal for the purpose of conveying salt, and salt golas stood on both banks of the khal. When the Government gave up the salt manufacture, it was decided by Government that the khal should be left to silt up.

43. If at any time after the commencement of this Act, on enquiry made by the Collector as far as possible in accordance with the provisions of Part II of this Act, it shall be found that it is unnecessary for the public interests to retain any embankment mentioned in the said Schedule (D), or any embankment or watercourse which may have been included in the said Schedule (D) under the clause next following of this section, the Lieutenant-Governor may direct that the same shall be no longer included in the said schedule: Provided that the Lieutenant-Governor may restore the same to the said schedule if, on any subsequent enquiry similarly conducted, it shall appear to the Lieutenant-Governor that it is necessary so to do.

The Lieutenant-Governor may, at any time after the passing of this Act, by a notification published in the *Calcutta Gazette*, direct that any embankment not mentioned in the said Schedule (D), or any watercourse, be included therein, and the provisions of this section shall apply to such embankment or watercourse.

The Regulations and Acts relating to embankments were considered in the case of *Nofoor Chunder Bhutto v. Jotendro Mohun Tagore*. I. L. R., 7 Calc., 505. In this case a patnidar claimed damages from the zemindars for destruction of crops caused by inundation, on the ground that the zemindars, being bound to repair certain embankments along the bank of the river Daroka, had neglected to do so. Field, J., said:—
“The defendants’ liability to maintain or repair the embankment may be based on one of the four following grounds:—

1. Common law.
2. Liability by prescription.
3. A duty created by the conditions of the original grant at the time of the Permanent Settlement.
4. A duty arising out of the circumstance of Government making an allowance for the particular purpose of repairing the embankments of the pergunnah.

In the Mahomedan times many embankments were maintained by Government, and some by the zemindars, who were then officers of Government, and deducted the amount expended by them from the revenue collected. At the Permanent Settlement the Government were very anxious that the revenue should be paid in one fixed sum. See s. 72 of Reg. VIII of 1793. “Settlement is to be made in one neat sum, free from any charges of moshaira, zemindari, amla, poolbundi, &c.,” The object of this section is to make land-revenue payable in one lump sum; it does not recite or impose any liability upon zemindars to construct or maintain embankments as a necessary incident of their zemindari tenure. The preambles to Regs. II and XXXIII of 1793 show, that

the Government was then to some extent alive to the importance of the construction and maintenance of embankments. The preamble to the latter Regulation contemplates embankments of two classes :—

1. Embankments which, as public works, were erected and are maintained by Government at its own expense.

2. Embankments in the estates of individuals which were not considered as public works, but which the Government contemplated being enlarged or put into a proper state of repair, and also contemplated the construction of new works of the same nature at the expense of individual zemindars.

This Regulation contains no provisions for compelling zemindars to carry out the general stipulations as to poolbundi, which were inserted in their kubooliuts (in the kubooliut which has been before us in this case, this stipulation as to the poolbundi is generally expressed, no particular embankments being specified as the embankments to be kept in repair). As a natural result, constant disputes arose between the zemindars and the officers of Government as to what embankments were to be repaired by Government and what by private individuals. The zemindars were found unwilling to take advances upon the terms provided by the Regulation ; and the old embankments were not maintained in proper repair, much less were new works undertaken, as the Government had hoped they would be. Fresh legislation became necessary, and Reg VI of 1806 was passed. The duty of repairing and maintaining public embankments was to be discharged by Embankment Committees. Section 11 invested the Committees with a general control over the embankments which were repaired at the expense of the zemindars and farmers, as well as those which were maintained by the Government. If a zemindar neglected to repair, the work was to be done by Government, and the expense recovered from him. But no provision was made for determining whether any particular embankment was one which the zemindar was bound, under the conditions of the Permanent Settlement, to maintain at his own expense ; and we find no provisions for recovering sums expended from the zemindars. But at the time no zemindar would have thought of resisting the perwana of the Embankment Committee or of the Collector, and no further difficulty appears to have been felt for a number of years.

The next legislation was in 1829. Reg. XI of that year abolished Embankment Committees, and transferred their duties to such officers as might be appointed by the Governor-General in Council. We have nothing then till we come to Act XXXII of 1855 :—A public embankment was defined to be an embankment now or hereafter kept up by the officers of Government at the expense either of Government or of any private individual. A superintendent of embankments was appointed, and vested with large powers of effecting improvements. The Revenue Authorities were vested with exclusive jurisdiction, and the jurisdiction of the Civil Courts was expressly excluded. There was also a provision in s. 6 that the cost of keeping up private embankments taken under Government was to be charged upon persons bound to keep up such embankments. But in this Act, as in previous enactments, no provision was made for deciding in any particular case whether any individual embankment is to be repaired at the expense of Government, or at that of the zemindar in whose estate it is situated. The law remained in this state till Act VI of 1873 was passed. The main features of this Act were :—(i) The powers of the superintendent were transferred to the Collector. (ii) The costs of works were to be borne rateably by the zemindars of the estates in which were situated the lands benefited or

protected by the repairs or works executed. It may be contended that the adoption of this principle of rateability amounted to a virtual renunciation on the part of Government of the principle which had existed in former enactments,—the principle, that is, of making individual zemindars personally liable for the cost of maintaining those embankments which were situated in their estates. In England, under the Statutes of Sewers, the burden of keeping up sea-walls, embankments, and similar works is thrown rateably upon the persons whose property is benefited by such works. (iii) The engineer was vested with certain powers for repair of public embankments subject to the control of the Collector. (iv) A specification set out and enumerated, for the first time, the embankments which are maintainable at the expense of Government: and the Lieutenant-Governor is vested with power to enter any new embankment in this Schedule or to remove any existing embankment thereupon.

The above legislation does not presuppose or assume any common law liability on the defendants to repair the particular embankment with which the case is concerned. If there had been any such common law liability, it would have been unnecessary to insert special stipulations in the Permanent Settlement kubooliuts; neither in this country nor in England is there any common law liability on a riparian proprietor to construct artificial works or keep them in repair, *Rex v. The Fagham Commissioners* (8 B. and C., 355); *Hudson v. Tabor*, (L. R., 2 Q. B. Div., 290). In the case of *Rex v. The Commissioners of Sewers for Essex* (1 B. and C., 477), it was held that all persons enjoying the benefit of a sea-wall are bound and liable at common law to repair and maintain it in the absence of any special custom or contract for that purpose. This liability is opposed to the supposition of any exclusive liability on the part of an individual to construct or maintain a sea-wall or embankment upon his own land for the benefit of his neighbours' land.

On the evidence Field, J., held the defendants were not liable by prescription. He then came to the third question—are the defendants bound by the conditions imposed upon them by the original grant made at the time of the Permanent Settlement? The stipulation in their kubooliut is as follows:—"I shall make embankment works of the said Mouzas at the proper time. Should there be any loss from any negligence, that loss shall be mine." The plaintiff can sue, although he was not a party to the agreement entered into between the Government and the zemindar.—*The Mayor of Lyme Regis v. Henley* (1 Bing. N. C., 222). In that case Park, J., said: "It is clear law that wherever an indictment lies for non-repair, an action on the case will lie at the suit of a party sustaining any peculiar damage. Where a matter of general and public concern is involved, and the king, for the benefit of the public, has made a certain grant, imposing certain public duties, and that grant has been accepted, we are of opinion that the public may enforce the performance of those duties by indictment, and individuals peculiarly injured, by action."

Field, J., then went on to consider whether the particular embankment was within the covenant contained in the defendants' kubooliut. He rejected the argument that the kubooliut ought to apply to all embankments which might at any future time be considered necessary for the protection of the land. He thought that the only reasonable construction to put on the kubooliut was, that the zemindar was bound to repair such embankments as in 1793 and previously had usually been repaired by the zemindar. The particular embankment in the case was found not to fall within such category. The case was remanded on the

51. The accounts of the actual expense incurred in executing any works or repairs, or of any portion of the actual expenses with which the Collector may determine to deal separately under this and the following sections, shall be prepared as soon as possible after the completion thereof. The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified, or any parts of them, are affected. Any such certificate may be amended at any time before the Collector has made an order charging or apportioning the amount under section 58. On receipt of such certificate or amended certificate, the Collector shall cause a statement to be prepared of the villages of which any lands are benefited or protected by such works and repairs, and of the estates to which they belong, and, except as otherwise in this Act provided, the zemindars of such estates and villages shall be liable to pay the said amount. Copies of the said accounts, certificates, and statements shall be deposited in the office of the Collector, and may there be examined by any person interested.

52. General notice of the receipt and deposit of such accounts, certificates, and statements in the office of the Collector shall be given. Special notices thereof shall also be served in respect of every estates in which the area liable to assessment of the apportioned charges exceeds one hundred acres; or instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zemindars of tenure-holders of which any sum is charged or apportioned; and if, within one month of such general notice being given, or of such special notice (if any) being served on him, any interested person shall object to the accounts on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than those mentioned in the estimates, the Collector shall enquire into such objection, and pass orders thereon.

53. The Collector shall add to the amount appearing in the said certificate all sums which
 Total sum payable. have been paid or have become payable in respect of the said works and repairs, whether as compensation, costs, and expenses under, incidental to, any proceedings taken or directed to be taken under Part II or Part V of this Act, or under sections 26 to 29 of Bengal Act VI of 1873, as cost of making of surveys and plans, as cost of preparing the estimates, accounts, certificates, and statements, as cost of the issuing and service of notices up to date, or on any other account, and shall then make an order specifying the total sum found payable, and in respect of works done under section 17 and section 31 the persons by whom, or in respect of other works, the estates in respect of which, the same is payable to him. If the order is made in respect of work done under section 17 or section 31, the same shall forthwith be served upon the party or parties liable to pay; otherwise the Collector shall proceed under the provisions in the next Chapter contained.

Interest may be charged upon any sum paid as compensation from the date of payment
 Interest. thereof at five per centum, or at such rate, not exceeding five per centum per annum, as the Lieutenant-Governor may from time to time determine.

2. *Liability for the Costs and Apportionment thereof.*

54. The total sum aforesaid, save so far as is otherwise provided in this Act, shall be paid to
 Parties liable to pay. the Collector by the zemindars of the estates in which are situated the lands benefited or protected by the repairs or works executed:

Provided that the sum standing to the credit of a pergunnah in Schedule (E) to Bengal
 Proviso in respect of the pergunnahs in Act VI of 1873 annexed in the account kept by the Collector, at the
 Schedule (E). time when the total amount payable is fixed under the provisions of section 53, shall be deducted from the total amount payable in respect of such portion of any embankment as is situated in such pergunnah, and that the zemindars of the estates situated in such pergunnah shall be

charged only with the balance of the amount (if any) which may remain payable.

55. Every zemindar, who is liable under the last preceding section for the payment of the whole or a portion of such total sum, shall be entitled to recover from the holder of every tenure held immediately under him, and from the holder of any land which is declared under the provisions of section 60 to form part of his estate, the sum apportioned to such tenure or land by the Collector under the provisions of section 59. And similarly, every tenure-holder shall be entitled to recover from the holder of any tenure subordinate to his own, and from the holder of any land declared under section 60 to form part of his tenure, the sum apportioned to such subordinate tenure or land by the Collector, under the said provisions.

56. So soon as the total sum payable as aforesaid has been ascertained, the Collector shall cause general notice to be given specifying the estates in respect of which any portion of such total sum will be chargeable, and special notices to be served in respect of every estate in which the area chargeable exceeds one hundred acres; or instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zemindars or tenure-holders of which any sum is charged or apportioned. Such notices shall make it known that an enquiry will be held at a day and place therein named for the purpose of apportioning amongst the zemindars and tenure-holders the said total sum, with interest and the costs of apportionment.

57. In any such enquiry the Collector shall take down in writing the names of all persons who may claim, or who may be alleged by any party interested, to be holders of tenures within any of the estates mentioned in such notice. In default of appearance of any such person, the Collector shall issue and serve a notice calling on him to appear at a date and place therein mentioned, and to show cause against being included in the order of apportionment to be made therein, and shall adjourn the enquiry till such date.

58. At such or any subsequently adjourned enquiry, the Collector, if there be only one estate liable, shall charge the zemindar thereof with the total amount payable; and if there be two or more estates, he shall apportion the same amongst the zemindars thereof, either—

Apportionment
amongst zemindars.

(a) rateably in proportion to the respective benefits derived by such estates from such works or repairs; or

(b) in proportion to the areas of the lands benefited or protected thereby, and comprised within such estates respectively; or

(c) with the sanction of the Local Government, in proportion to the amount of revenue payable for such estates respectively:

Provided that the said total amount payable in respect of the embankments on the right bank of the river Gunduk shall be chargeable, in accordance with the custom in force for estates; to the zemindars of all the estates situated in the district of Sarun, in proportion to the amount of revenue respectively payable for such estates:

Provided also that the total amounts which may have been expended by the Government before the commencement of this Act, and the total amounts which become payable in accordance with the provisions of this Act, on account of any year in respect of the embankments on the left bank of the river Gunduk in the district of Mozufferpore, shall be chargeable, and shall be deemed always to have been chargeable, in accordance with the custom hitherto in force in respect of such embankments; that is to say, chargeable to the zemindars of all the estates situated in the following pergunnahs, *viz.*, Rati, Gadasand, Hajipur, Bhatsala, Garjaul Nae, Saresa, and Balagach, in proportion to the amounts of land-revenue payable for such estates respectively, but so that the amount out of any total sum apportioned in respect of each estate in Rati, Gadasand, and Hajipur, shall bear such a proportion to the land-revenue payable for such estate as shall be twice as great as the proportion which the amount apportioned in respect of each estate in the remaining pergunnahs shall bear to the land-revenue payable for such estate.

59. The Collector shall, in like manner, except in respect of the said embankments on the right bank and left bank of the river Gunduk, charge or apportion the amount payable in respect of each estate upon or amongst the holders of the tenures therein rateably in the proportion of benefit so received or of area so benefited or protected, first deducting therefrom such sum as, on the like principle of proportion, is payable in respect of such portion of the estate as is not included within any tenure.

60. All lands held without payment of rent not being estates may, for the purposes of this Act, be deemed to form part of any estate or of any tenure within the local boundaries of which they are included; and, if they are not included within the local boundaries of any estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal and signature, declare.

61. The amount charged to or apportioned on any estate of tenure shall be payable in equal instalments on such days as the Lieutenant-Governor shall direct, provided that no instalment shall exceed four annas for every acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year.

Interest shall be charged on the unpaid portion of the said amount from the date of apportionment until payment thereof at five per centum or at such rate, not exceeding five per centum per annum, as the Lieutenant Governor may from time to time determine.

Notification of the 2nd June 1883 fixes the following dates for payments :—

I.—In respect of estates

- (1) In Districts where the Bengali or Umli era prevails, except the Division of Orissa and District of Chittagong—
28th June ; 28th September ; 12th January ; 28th March.
- (2) In Districts where Fusli era prevails—
7th June ; 28th September ; 12th January ; 28th March.
- (3) In the Division of Orissa—
28th April ; 28th July ; 8th November ; 28th January.
- (4) In the District of Chittagong—
25th May ; 25th September ; 26th December ; 25th February.

II.—In respect of tenures—

15th April ; 15th July ; 15th October ; 15th January.

III.—When any instalment is not paid on the date on which it is due, interest shall be charged at the rate of 5 per centum per annum from such date until payment thereof.

62. If, after the apportionment of the expenses of any works and repairs as above prescribed, any expenses not included in such apportionment shall be found to have been paid or to have become payable on account of the said works or repairs, whether as compensation or otherwise, the Collector may proceed to apportion such further expenses in the manner in this Part provided.

63. Instead of the procedure prescribed above for charging upon and recovering from zemindars the expenses actually incurred in the repairs and maintenance of public embankments and watercourses and the works connected therewith, the Lieutenant-Governor may, by an order to be published in the *Calcutta Gazette*, direct that an estimate be made of the expenses to be incurred in respect of such repairs, maintenance, and works during any number of years, not exceeding thirty, which he may think fit ; and may by a subsequent order fix the total sum payable during such number of years by the zemindars of the estates benefited by such repairs, maintenance, and works ;

Provided that no order fixing such total sum shall be passed by the Lieutenant-Governor until three months after the amount of such estimate shall have been published in the *Calcutta Gazette* and by a general notice calling on all persons interested to prefer to the Collector any objections they may think proper against such amount being fixed as the total sum. Every such objection shall be submitted to the Lieutenant-Governor for his consideration.

64. The period fixed in any order under the section last preceding may include also years previous to the commencement of this Act, provided that in such case the total sum mentioned in the said section shall be calculated by adding the amounts actually expended before the

making of such order, to the estimate of expenses to be incurred during the rest of the period included in such order.

65. The total sum mentioned in section 63 or in section 64 may be made recoverable in Works in respect of which such estimate may be made. respect of the expenses of repairs and maintenance, and the expenses of works connected with the repairs and maintenance—

(a) of any protective works which may be specified in such orders;

(b) of all the public embankments and watercourses in any district; or

(c) of all the public embankments and watercourses within any tract of country specified in the order of the Lieutenant-Governor; and any such tract may contain the whole or portions of any one or more districts;

and no further sum shall be recoverable during such period in respect of the expenses of such repairs, maintenance, and works connected therewith, save so far as any such works or repairs are executed under the provisions of section 18 or of section 31.

But such total sum shall not include the expenses of executing any new works which may be undertaken under the provisions of this Act within any district or tract as aforesaid.

Whenever the Lieutenant-Governor shall declare that any work executed or to be executed within such district or tract is a new work within the meaning of this section, the cost of executing such work and of maintaining the same shall be payable by the zemindars to the Collector under the provisions of this Act, in addition to any total sum fixed under section 63 or section 64 as payable by them.

66. On publication of any order of the Lieutenant-Governor under section 63, the Collector shall proceed to charge or apportion the said total sum upon or among the zemindars and (except in respect of the embankments on the right and left banks of the river Gunduk as provided in section 58) among the tenure-holders who are liable to pay the same, as above provided.

67. The sum so apportioned in respect of any estate or tenure on account of any such period as is mentioned in section 63 shall be payable in equal portions in each of the years included in such period, and each such portion if unpaid shall carry interest at five per centum, or at such rate not exceeding five per centum, per annum, as the Lieutenant-Governor may from time to time determine from the end of the year in which it is payable.

68. On the completion of any charge or apportionment under this Act, the Collector shall make an order specifying the estates and tenures in respect of which any sum charged or apportioned is payable, and the sums payable in respect of each of the instalments of such sums, and the dates on which such sums are payable.

3.—*Recovery thereof.*

69. As soon as may be after any final order of apportionment is made as provided in the section last preceding, the Collector shall cause copy of such order to be published with a general notice stating that the amounts apportioned on the zemindars in respect of estates are payable to the Collector, and the amounts apportioned on the tenure-holders in respect of tenures are payable to the zemindars or superior tenure-holders. Instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zemindars or tenure-holders of which any sum is charged or apportioned.

70. If any such sum payable to the Collector, or any instalment thereof, be not, pursuant to the said order, paid, the same with interest may be recovered as arrears of a demand under the provisions of the Public Demands Recovery Act, 1880, or any similar Act for the time being in force.

71. When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act XI of 1859, or under section 70 of Bengal Act VII of 1876, or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of all sums due under this Act, to all the advantages of separate liability enjoyed by him under the said Act XI of 1859 and Bengal Act VII of 1876 respectively, in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of a separate notice in every case in which special notice is by this Act required to be served from the date on which such advantages shall take effect in respect of the demand of Government revenue.

Similar privileges shall attach to every recorded holder of a revenue-free estate who has opened a separate account under section 46 of Bengal Act IX of 1880 in respect of the amount of cesses payable by him.

72. Notwithstanding anything contained in section 70, any such sum shall be a first charge on the estate in respect of which it is apportioned, and shall be deemed to be a demand debited to the estate in the public accounts of the district within the meaning of section 31 of Act XI of 1859, and such charge shall not be avoided by any sale, nor shall the joint liability of the entire estate for such sum be affected by any partition of the said estate which may subsequently take place.

73. If the Collector thinks it inexpedient to proceed for the recovery of such sum or any part thereof under the provisions of section 70, or having so proceeded shall have failed to realize the sum due, he may, with the sanction of the Board of Revenue, raise the amount necessary to discharge the sum or instalment remaining unpaid—

- (a) by mortgaging the whole or any part of such estate;
- (b) by letting in farm or managing by himself or another

(c) partly by one of such modes and partly by another or others of them.

For the purposes of this section the Collector may exercise all the powers of the owner of such estate, and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

74. Every zemindar or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of putnee tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2, and 3 of section 17 of Regulation VIII of 1819, as amended by Bengal Act VIII of 1865, or by the provisions of any similar Act for the time being in force; provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

Recovery by zemindars and tenure-holders.

PART VII.

Penalties.

75. Whoever wilfully obstructs any person duly authorized under this Act in removing or levelling any embankment, house, hut, or other building, or in the lawful exercise of any of the powers in this Act conferred, shall, in case such obstruction shall not amount to an offence within the provisions of the Indian Penal Code, be liable to imprisonment of either description for any period not exceeding six months, at the discretion of the Magistrate, or to a fine not exceeding two hundred rupees.

Penalty for obstructing persons in exercise of powers conferred by Act.

76. (a) Every person who, in any of the territories to which this Act extends, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed

Penalty for unauthorized interference with embankments or drainage.

or diverted, any watercourse, if such act is likely to interfere with, counteract, or impede any public embankment or any public watercourse ;

(b) every person who, within the limits of the tract included in any prohibitory notification under section 6, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed or diverted, any watercourse ; and

Penalty for abetment of such acts.

(c) every person who shall abet any such act as is mentioned in clauses (a) and (b),

shall be liable, on conviction, to a fine not exceeding five hundred rupees, or, in default of payment, to imprisonment of either description for a period not exceeding six months.

77. No person shall, without due authority, cut through, or attempt to cut through, any public embankment, or destroy, or attempt to destroy, any such embankment, or open or shut, or obstruct any such sluice in any such embankment, or any public watercourse ; and every person who shall commit any breach of the provisions of this section shall, in case the act shall not amount to mischief within the meaning of the Indian Penal Code, be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees.

78. Every person who shall make any dam or other obstruction for the purpose of diverting the current of a river or watercourse wherein or whereon there are public embankments, without the permission of the officer in immediate charge of the embankments, or shall refuse or neglect to remove any such dam or obstruction so made by him when required to remove it by the Engineer, or without the permission of the Engineer previously obtained shall cut or otherwise alter the banks of any embanked river or watercourse, or remove the earth from any public embankment, or drive

Penalties for diverting rivers or permitting cattle to graze on embankments, &c.

stakes into it, or by any other wilful act destroy or diminish the efficiency of such embankment ; and every person who, without such permission, shall cause or knowingly and wilfully permit any cattle to graze upon any such embankment, or tether or cause or wilfully permit any cattle to be tethered upon any such embankment, or root up any grass or other vegetation growing on any such embankment, shall be liable to imprisonment of either description for a term not exceeding six months, or to a fine not exceeding to hundred rupees.

79. Whenever any person is convicted of an offence under either of the three last preceding sections, the convicting Magistrate may order that he shall remove the embankment or obstruction, or repair the damage, in respect of which the conviction is held, within a period to be fixed in such order. If such person neglects or refuses to obey such order within the fixed period, the Engineer may remove such embankment or obstruction or repair such damage, and the cost of such removal or repair shall be levied from such person in addition to any other penalty in the manner provided in section 307 of the Code of Criminal Procedure.

PART VIII.

Miscellaneous.

80. Every proclamation and general notice by this Act required to be issued or given shall be published by affixing a copy of the same in the office of every Collector, Subdivisional Officer, and Munsif within whose jurisdiction, and at every police-station within the limits of which, any lands affected by such proclamation or notice are known by the Collector to be situated ; and by affixing copies of the same in conspicuous positions in such hâts, bazars, towns, villages, or other public places as the Collector may direct ; and also by giving notice by beat of drum at such public places that such copies have been affixed and that one copy of the papers containing the information which is the subject of such proclamation or general

notice is open to inspection by all concerned at the office of the Collector.

Service of special notices. 81. Every special notice or order by this Act required to be served shall be served,

(1) by delivering a copy of the same to the person to whom it is directed, or, on failure of such service, by posting a copy on some conspicuous part of the house in which the said person resides, or by delivering a copy to any agent authorized to appear generally for the person to whom such notice or order is directed; or

(2) by sending a registered letter containing a copy of such notice or order directed to the said person at his usual place of abode, or at the place where he may be known to reside; or

(3) by posting a copy of the notice or order at the mal-cutchery of the estate, village, or tenure to which the same relates; or if no such mal-cutcherry be found, on some conspicuous place on the said estate, village or tenure; or

(4) if the person on whom the notice or order is to be served is a zemindar, by delivering a copy thereof to the agent who shall have paid an instalment of revenue next before or who may pay the instalment next after the preparation of such notice or order, on behalf of such zemindar.

In all cases where two or more persons are holders of an estate or tenure, service under the last two clauses shall be deemed to be good and sufficient service on each and all of such persons.

82. In any enquiry or appeal held under this Act, the Collector and the Commissioner shall respectively have the same powers as those conferred on Courts by the Code of Civil Procedure of summoning and examining witnesses and compelling the production of documents.

83. No proceedings under this Act shall be impeached or affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure or land in respect of which he is rendered liable to pay; provided the directions of this Act be in substance and effect complied with; and no proceedings under

this Act shall for want of form be quashed or set aside in any Court of Justice.

84. Every order passed by the Collector in respect of applications under section 18, and every order passed under sections 11, 50, 52, or 68, shall be appealable to the Commissioner of the Division, and every such order of the Commissioner, except when otherwise directed by this Act, shall be appealable to the Board of Revenue, but no appeal shall lie under this section against any order unless the same be presented within one month from the date of the order.

Appeal from orders.

85. All the powers of a Collector under this Act shall be exercised under the general control and orders of the Commissioner of the Division, and all the powers of Collectors and Commissioners shall be exercised subject to the general control and orders of the Board of Revenue and of the Government.

General control of Commissioner and Government.

Every order passed by any of the said authorities shall be subject at any time to be varied or set aside by the controlling authority.

86. Subject to the provisions of the two sections last preceding, every order passed by the Collector in respect of applications under section 18 and every order passed under sections 11, 50, 52, or 68, and every order passed by a controlling authority in respect of such order of a Collector, shall be final, and not liable to be modified or altered otherwise than as expressly provided in this Act.

Orders to be final.

87. Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient, such land shall be restored by the Collector to the estate or tenure from which such land was originally taken on repayment of the compensation, if any, which was paid for such land when the same was taken for the purpose of the embankment. If persons who are entitled to the restoration of any land under this section, or any of them, refuse or neglect to pay such price within a reasonable time after demand, the same shall be

Disposal of lands no longer required for embankments.

sold by the Collector as a revenue-free holding for such price as he can obtain for the same. All sums obtained for lands conveyed under the provisions of this section shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of any new embankment or drainage works, or of the expenses of maintaining any embankment or drainage works affecting the said lands and other adjacent lands, in reduction of the amount chargeable upon the zemindars and tenure-holders of the lands benefited, as hereinbefore provided, if any amount be so chargeable.

88. A Collector may delegate any of his powers under this Act to a Deputy Collector, but from any order passed by a Deputy Collector to whom powers have been so delegated, an appeal shall lie to the Collector if presented within thirty days of the date of the order.

Every such delegation of powers shall be reported to the Commissioner of the Division.

89. All offences created by this Act shall be enquired into and tried by a Magistrate of the first or second class.

90. The Lieutenant-Governor may from time to time make rules consistent with the provisions of this Act to regulate the following matters :—

(a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(b) the business of Embankment Committees ;

(c) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(d) the person by whom, the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(e) the amount of any charge made under this Act ; and

(f) generally to carry out the provisions of this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Embankments.

Such rules, alterations, and cancelment shall be published
Publication of rules. in the *Calcutta Gazette*, and shall thereupon have the force of law :

Provided that no rules shall be made by the Lieutenant-Governor under the powers conferred on him by this section until a draft of the same shall have been published in the *Calcutta Gazette* for one month, after which time the Lieutenant-Governor may pass such rules as originally published, or with such alterations, additions, and omissions as he may think fit.

91. Nothing in this Act shall apply to any embankment, land, or watercourse which is
Saving of operation of certain Acts. under the operation of any of the following Acts :—

The Bengal Drainage Act, 1880.

The Bengal Irrigation Act, 1876.

Bengal Act V of 1864 (*an Act to amend and consolidate the law relating to the collection of Tolls on Canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the provinces under the control of the Lieutenant-Governor of Bengal*).

PART IX.

Special provisions for the Province of Orissa.

92. The powers conferred on the Collector by section 25
Powers conferred on Superintendent of Embankments in Orissa. may, in the Province of Orissa, be exercised by the Superintendent of Embankments with the consent of the Collector previously obtained, and the references in the said section to other parts of this Act shall be deemed to be references to the corresponding portions respectively of Act XXXII of 1855 (*an Act relating to Embankments*). The consequences mentioned in section 26 shall attach to everything done by the Superintendent of Embankments under the provisions of this section.

93. In cases in which the Engineer in charge of any
Power to Engineer to act in urgent cases. Embankment may be of opinion that delay for the purpose of obtaining the orders of the Superintendent of Em-

bankments and the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the said Superintendent with the consent of the Collector in pursuance of the last preceding section. The Engineer shall forthwith report to the said Superintendent any action taken by him under this section, and shall be guided by any instructions which he may receive from him in respect thereof.

94. Sections 4, 5, 6, 34, and 76 shall extend to the Province of Orissa, the words "Superintendent of Embankments" being substituted for the word "Collector" in clauses (a) and (b) of section 76.

Sections made applicable to Orissa.

SCHEDULE.

SCHEDULE I.—(*Referred to in section 2.*)

(Portions of Bengal Act VI of 1873 which are not repealed.)

12. Whenever any land or earth from any land the property of any person, is required for the purposes of any works commenced in pursuance of the provisions of the last preceding section, or for the purposes of section 18 in cases where the Collector shall be of opinion that proceedings for the acquisition of such land according to the provisions hereinafter contained in section 25, would cause delay as aforesaid, the Collector shall cause a proclamation to be issued in form in Schedule (B) annexed to this Act, giving notice thereof at convenient places in the locality in which such land is situated, and he may at the same time take possession of the same for the said purposes.

13. The Collector shall ascertain and record the nature and estimated value of the crops and trees (if any) standing on such land, and shall offer adequate compensation to the persons interested. If such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions of section 29 :

Compensation for standing crops and trees.

21. *Provided always that in case the Collector be of opinion that the delay required by such proceedings is likely to be attended with grave and imminent danger to life or property, it shall be lawful for him forthwith to cause such trees, houses, huts, or buildings to be removed, and in such case the compensation due therefor shall be ascertained and paid in the manner hereinafter provided.*

26. *Whenever any land shall have been taken or used under the provisions of Part III, the Collector shall cause a proclamation to be issued in form in Schedule (C) annexed to this Act at convenient places on or near the land so taken, stating that Government has taken possession of the land, and that claims to compensation for all interests in such land shall be made to him. Thereupon the land shall vest absolutely in the Government free from all encumbrances, subject, however, to the claims for compensation to be ascertained in manner as in this Part is provided.*

27. *Such proclamation shall state the particulars of the land so taken, and shall require persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of issuing the proclamation), and to state the nature of their respective interests in the land, and the amount and particulars of their claims to compensation for such interest.*

28. *The Collector shall also serve notice to the same effect on the occupier (if any) of such land, and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.*

29. *After service of such notice proceedings shall be had and taken to determine the amount of compensation to be payable in respect of such land, in accordance with the provisions of the Land Acquisition Act, X of 1870, or other law for the time being in force for the acquisition of land for public purposes.*

Schedules B, C, D, and E.

SCHEDULE II.—(*Referred to in section 2.*)

Section of Bengal Act VI of 1873 in which the reference is made.	The reference as it stands.	To what portion of the present Act the reference is to be read to apply.
Section 12	To “the last preceding section.”	Section 25.
Section 12	To section 18 ...	Section 30.
Section 12	To section 25 ...	Section 37.
Section 21	To “such proceedings.”	Section 19.
Section 26	To Part III ...	Part III.
Section 26	To “Part” ...	Part V.

SCHEDULE III.—(*Referred to in section 8.*)

Notice is hereby given, as required by section 8, Bengal Act II of 1882, to all persons interested, that it appears to the Collector that the following work should be done; that is to say [here state the nature of the work and the purpose for which it is to be undertaken]. * *For the execution of this work the undermentioned land will be required to be taken up:—*

1	2	3
Pergunnah in which land is situated.	Village in which land is situated.	Area of land.

Estimates of the proposed work, with the necessary specifications and plans, together with a copy of the survey map showing the lands likely to be affected by the said work, are open for inspection at this office by any interested person, who is allowed to take copies thereof.

† The total probable cost of such work will be the sum of Rs. , and the rate per acre of the area benefited or protected by the said work is estimated at Rs.

* The words in italics and the tabular form to be omitted if no land is to be acquired.

† These words may be omitted, unless it is proposed to recover the cost of the work from the zemindars and tenure-holders.

The following estates and villages will probably be affected by the work proposed [*here set out a list of the estates and villages*]:

Any person interested and wishing to show cause against the execution of the works specified, is hereby required to appear before the Collector for that purpose on the day of

The day of

A. B.,
Collector of

PART VII. Evidence.

ACT No. I. OF 1872.

[*As amended by Act XVIII of 1872.*]

The Indian Evidence Act, 1872.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

1. This Act may be called “The Indian Evidence Act, 1872:”

Short title.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator;

Extent.

Commencement of Act. and it shall come into force on the first day of September, 1872.

Repeal of enactments. 2. On and from that day the following laws shall be repealed:—

(1) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

(2) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils Act, 1861,' in so far as they relate to any matter herein provided for; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Nothing in the Indian Evidence Act, 1872, shall be deemed to affect Act No. XV of 1852 (to amend the law of Evidence), section 12.

Saving of Act XV of 1852, section 12.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

Interpretation-clause.

'Court' includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

'Fact.' 'Fact' means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(a.) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b.) That a man heard or saw something is a fact.

(c.) That a man said certain words is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one
 ‘ Relevant.’ is connected with the other in any of
 the ways referred to in the provisions
 of this Act relating to the relevancy of facts.

‘ Facts in issue.’ The expression ‘ facts in issue ’ means
 and includes—

any fact from which, either by itself or in connection
 with other facts, the existence, non-existence, nature, or
 extent of any right, liability, or disability, asserted or
 denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the
 law for the time being in force relating to Civil Procedure,
 any Court records an issue of fact, the fact to be asserted
 or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A at the time of doing the act which caused B's death, was, by
 reason of unsoundness of mind, incapable of knowing its nature.

‘ Document ’ means any matter expressed or described
 ‘ Document.’ upon any substance by means of let-
 ters, figures, or marks, or by more
 than one of those means, intended to be used, or which
 may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document ;

Words printed, lithographed or photographed are documents ;

A map or plan is a document ;

An inscription on a metal plate or stone is a document ;

A caricature is a document.

‘ Evidence.’ ‘ Evidence ’ means and includes—

(1) all statements which the Court permits or requires
 to be made before it by witnesses, in relation to matters of
 fact under inquiry ;

such statements are called oral evidence :

(2) all documents produced for the inspection of the
 Court ;

such documents are called documentary evidence.

A fact is said to be proved when, after considering the
 ‘ Proved.’ matters before it, the Court either
 believes it to exist, or considers its

existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the Court either
 ‘Disproved.’ believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

A fact is said not to be proved
 ‘Not proved.’ when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court
 ‘May presume.’ may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it :

Whenever it is directed by this Act that the Court shall
 ‘Shall presume.’ presume a fact, it shall regard such fact as proved, unless and until it is disproved.

When one fact is declared by this Act to be conclusive
 ‘Conclusive proof.’ proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of
 Evidence may be the existence or non-existence of every
 given of facts in issue fact in issue and of such other facts
 and relevant facts. as are hereinafter declared to be
 relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :

- A's beating B with the club ;
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(*b.*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a.*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b.*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d.*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a.*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b.*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c.*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word ‘conduct’ in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—‘the police are coming to look for the man who robbed B,’ and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after a commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

9. Facts necessary to explain or introduce a fact in

Facts necessary to explain or introduce relevant facts, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a.) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter uncon-

nected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—

'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that Things said or done by conspirator in reference to common design. two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. Facts not otherwise relevant are relevant—

When facts not otherwise relevant become relevant. • (1) if they are inconsistent with any fact in issue or relevant fact ;
(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

12. In suits in which damages are claimed, any fact

In suits for damages, facts tending to enable Court to determine amount are relevant. which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

13. Where the question is as to the existence of any

Facts relevant when right or custom is in question. right or custom, the following facts are relevant—

(a.) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence :

(b.) Particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—

Facts showing existence of state of mind or of body or bodily feeling. such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he is in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

the person making it were dead, it would be relevant as between third persons under section thirty-two.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the Captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two).

(c.) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (two).

(d.) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove those statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

Account books, though proved not to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm.—I. L. R., 1 Bomb., 610.

22. Oral admissions as to the contents of a document

<p>When oral admissions as to contents of documents are relevant.</p>	<p>are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary</p>
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evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases, when relevant.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section one hundred and twenty-six.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

25. No confession made to a Police-officer shall be proved as against a person accused of any offence.

Confession to Police-officer not to be proved.

26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession by accused while in custody of Police not to be proved against him.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

28. If such a confession as is referred to in section twenty - four is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said,—‘ B and I murdered C.’ The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—‘ A and I murdered C.’

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured with-

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

out an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and or is made in course of business; in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5.) When the statement relates to the existence of any relationship between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and

when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any or is made in will or relationship by blood, marriage or deed relating to family adoption between persons deceased, affairs ; and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7.) When the statement is contained in any deed, or in document relating to transaction mentioned in section 13, clause (a) ; will or other document which relates to any such transaction as is mentioned in section thirteen, clause (a).

or is made by several persons, and expresses feelings relevant to matter in question. (8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is, whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased danya in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Clauses 5 and 6 as amended by Act XVIII of 1872.

33. Evidence given by a witness in a judicial proceed-

ing, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

ing, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—
that the proceeding was between the same parties or their representatives in interest ;
that the adverse party in the first proceeding had the right and opportunity to cross-examine ;
that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation. — A criminal trial or inquiry shall be

deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Account-books, containing entries not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated, if regularly kept in the ordinary course of business, are admissible as evidence under s. 34, and *semble* under s. 32, cl. 2.—I. L. R., 1 Bomb., 610.

Jumma-nasil-baki papers have no weight except as corroborative evidence.—10 C. L. R., 545.

Only such books as are entered up as transactions take place can be considered as books regularly kept in the course of business within s. 34.—I. L. R., 4 Bomb., 576.

35. An entry in any public or other official book, register, or record stating a fact in issue or relevant to it, and made by a public servant in the discharge of his official duty, or by any other person joined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Relevancy of entry in public record, made in performance of duty.

This section does not make the public book evidence to show that a particular entry has not been made in it.—7 C. L. R., 356.

The *wajib-ul-arz* (record-of-rights) of a mouza in an Oudh talook was held to have been properly received in evidence under s. 35. Had it been the case that these papers were not to be treated as records describing a custom, but as recording only the opinions of those who know it, the 48th section of the Act would have made them admissible.—I. L. R., 5 Cal., 744.

The measurement papers, prepared by a batwarra amin deputed by the Collector to make a partition do not come within s. 35.—6 C. L. R.,

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency &c., jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

As amended by Act XVIII of 1872.

42. Judgments, orders or decrees other than those mentioned in section forty-one, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders or decrees other than those mentioned in sections forty, forty-one and forty-two, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held*, that the decision of the Criminal Court did not operate under s. 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter.—I. L. R., 4 All., 97.

If the father had sued first in the Civil Court and got a decree, the abduction would have to be independently proved in the Criminal Court.

"Or is relevant under some other provisions of the Act." It had been held in several cases that previous judgments are relevant as 'facts' within the meaning of s. 11, or as 'transactions' within the meaning of s. 13. But it has lately been held by a Full Bench of the Calcutta High Court that they are not so relevant.—6 C. L. R., 439.

MITTER, J., was the only dissentient member. The Full Bench held that if judgments were relevant under ss. 11 and 13, ss. 40 to 43 would be surplusage. JACKSON, J., said: "It seems to me clear that the right spoken of in s. 13 is something quite distinct from ownership. How can it properly be said, when the question between the plaintiff and respondent is, which of them is entitled to a thing that the question relates to the *existence of a right*? That some one has a right to the property

is undoubted. The question is, to whom it belongs? Section 13 refers to incorporeal rights." GARTH, C. J., said: "I consider that an adjudication or opinion expressed in a judgment is not, properly speaking, 'a fact,' and certainly not a fact within the meaning of s. 11. The delivery or the existence of the judgment itself may be a fact, but the decision which the judgment contains is no more a fact than an opinion expressed by any other person who is not exercising judicial functions, such as an opinion given by the legal member of Council, in answer to a question by the Government."

Where a Munsif had directed a prosecution for forgery by adding signatures to a bond, and his judgment was admitted in evidence by the Magistrate, and referred to by the Judge in his charge to the jury.—*held*, that the judgment of the Munsif was inadmissible in evidence.—7 C. L. R., 74.

Bombay rulings as to relevancy of judgments differ from the Calcutta Full Bench ruling.

Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent, although they are not conclusive under the Indian Evidence Act as they were before that Act came into operation, are yet admissible in evidence under s. 13 of the Act even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent.—I. L. R., 3 Bomb., 3.

In the case of *Niamat Ali v. Guru Das* (22 W. R., 365), COUCH, C. J., referring to s. 13, said: "The word 'transaction' is certainly large enough to allow the proceedings in such suits as these to be admitted as evidence, not as conclusive, but as of such weight as the Court may think they ought to have: and in this section there is not the limit that the suit must be between the same parties as the one in which the judgment or decree in it is sought to be used. Of course, the value of it will be very different where it was given in a suit to which the person against whom it is used was not a party, and had no opportunity of contesting the matter, and where he was party to the suit, and had the opportunity of producing any evidence he might think fit. Unless the Indian Evidence Act has excluded judgments and decrees which had previously been considered as very good evidence, and which are, indeed, in many cases almost, if not quite, conclusive, it is clear that the decisions referred to were admissible in this case."—I. L. R., 3 Bomb., 5.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section forty, forty-one or forty-two, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting.

Opinions of experts.

ing, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, are relevant facts.

Such persons are called experts.

Illustrations.

(a.) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

As amended by Act XVIII of 1872.

46. Facts, not otherwise relevant, are relevant, if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that

person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the questions whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression ‘general custom or right’ includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Speaking of the *wajib-ul-arz* (record-of-rights) their Lordships of the Privy Council said in the case of *Lekhraj Kooar v. Mahipal Singh* :—

The Indian Evidence Act has repealed all rules of evidence not contained in any Statute or Regulation, and the plaintiff must, therefore, show that these papers are admissible under some provision of the Indian Evidence Act. The 35th section may be read as follows: “An entry in any official record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, is itself a relevant fact.” There can be no doubt that the entries in question, supposing them to bear the construction already given to them, state a relevant fact, if not the very fact in issue, *viz.*, the usage of the Bahrulia clan. If so, then the entry having stated that relevant fact, the entry itself becomes by force of the section a relevant fact,—that is to say, it may be given in evidence as a relevant fact, because, being made by a public officer, it contains an entry of a fact which is relevant.

Again, if these papers are not to be treated as records themselves describing the custom, but as recording only the opinions of persons likely to know it, the 48th section would appear, in that view of the entries, to make them admissible. The 48th section is, &c. Then if

opinions of this nature were relevant, the entry of such opinions in an official record is itself a relevant fact which makes the entry admissible. There may be doubt whether what for the present purpose are assumed to be opinions would fall under s. 48 or s. 49, which refers to family usages. (See N. W. P. High Court Reports, p. 397.)

The daughter objects that as she was no party to the making up of the papers, she is not bound by the statements in them. She is, no doubt, not concluded by them. They do not estop her from asserting her right or disputing the custom which is stated in them. They are only received as evidence, and are open to be answered, and the statements in them may be rebutted.—6 C. L. R., 593. The tendency of Civil Courts now-a-days is to reject all evidence of custom or general right. The above rulings are important and authoritative.

See also notes under Reg. VII, 1822, ss. 9 and 14.

See also notes under s. 50, *infra*.

Opinions as to usages,
tenets, &c., when relevant.

49. When the Court has to form
an opinion as to—

the usages and tenets of any body of men or family,
the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven or four hundred and ninety-eight of the Indian Penal Code.

Illustrations.

(a.) The question is, whether A and B were married

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

In a case before the Sadr Dewany Adalut, in which a Mahomedan marriage was disputed, one of the questions put to the law-officers was, 'What proof of such marriage is required by law?' The answer was

‘ In testifying to a fact, it is necessary, in general, for the witness to have personally known it. But in questions of genealogy, marriage, and certain other matters, hearsay may suffice : provided the witness have the means of knowing the fact correctly, from general local report, or particular credible communication.’—S. D. A., 1801, Vol. I, 48.

51. Whenever the opinion of any living person
 Grounds of opinion relevant, the grounds on which such
 when relevant. opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases, the fact that the character of any
 In civil cases character to prove conduct imputed irrelevant. person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases, the fact that the character of any
 Character as affecting damages. person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections fifty-two, fifty-three, fifty-four and fifty-five, the word ‘character’ includes both reputation and disposition ; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved. 56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice. 57. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

Explanation.—The word 'Parliament,' in clauses (two) and (four), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;

2. The Parliament of Great Britain;

3. The Parliament of England;

4. The Parliament of Scotland, and

5. The Parliament of Ireland:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Par-

liament or other Act or Regulation having the force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government :

(8.) The existence, title and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13.) The rule of the road on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

As amended by Act XVIII of 1872.

58. No fact need be proved in any proceeding which the parties thereto or their agents

Facts admitted need not be proved.

ng, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct,—that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence. 63. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained ;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;

(3.) Copies made from or compared with the original ;

(4.) Counterparts of documents as against the parties who did not execute them ;

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence. 64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(a.) When the original is shown or appears to be in the possession or power

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(b.) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d.) When the original is of such a nature as not to be easily moveable;

(e.) When the original is a public document within the meaning of section seventy-four;

(f.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

As to what amount of proof of the original documents is necessary, their Lordships of the Privy Council have remarked, that there is a

considerable difference between cases where documents come in *as mere links* or as part only of the evidence in the case, and those in which the suit is *actually brought upon the instrument of which a copy is tendered*, and the whole cause of action depends on the proof of the original instrument; strict proof may properly be required in the latter case.—2 Suth. P. C., 550.

By the Law of Evidence administered in England, which has been in a great measure, with respect to deeds, made the law of India, the first condition of the right to give secondary evidence of the contents of a document not produced in Court, is the accounting for the non-production of the original.—I. L. R., 6 Cal., 720.

66. Secondary evidence of the contents of the documents referred to in section sixty-five,

Rules as to notice to produce.

clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1.) When the document to be proved is itself a notice;
- (2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4.) When the adverse party or his agent has the original in Court;
- (5.) When the adverse party or his agent has admitted the loss of the document;
- (6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

As amended by Act XVIII of 1872.

67. If a document is alleged to be signed or to have been written wholly or in part by

Proof of signature and handwriting of person alleged to have signed or written document produced.

any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. If a document is required by law to be attested, it shall not be used as evidence until

Proof of execution of document required by law to be attested.

one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must

Proof where no attesting witness found.

be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing,

Comparison of signature, writing, or seal with others admitted or proved.

or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents:—

1. Documents forming the acts, or records of the acts—
 (i) of the sovereign authority,
 (ii) of official bodies and tribunals, and
 (iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

A jamabandi prepared by a Deputy Collector while engaged in the settlement of land under Reg. VII of 1822 is a 'public document' within the meaning of s. 74. It is not necessary to show that, at the time when such document was prepared, a ryot affected by its provisions was a consenting party to the terms therein specified.—I. L. R., 4 Calc., 79.

In a suit to obtain possession of land certain documents purporting to be abstracted from, or copies of, Government measurement chittas, dated Mughi, 1126-1127 (1764), were produced. These documents were produced from the Collectorate, but there was nothing to show that they were the record of measurements made by any Government officer. *Held*, that they were not 'public documents' within the meaning of s. 74.—I. L. R., 7 Calc., 76.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person, on demand, a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of documents
by production of certi-
fied copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government, by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4.) The acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purport-

Presumption as to genuineness of certified copies.

ing to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence

of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of justice in England or Ireland, without

Presumption as to
documents produced as
record of evidence.

Presumption as to
Gazettes, newspapers,
private Acts of Parlia-
ment and other docu-
ments.

Presumption as to
document admissible in
England without proof
of seal or signature.

proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate: but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

The presumption in regard to the accuracy of a map made under the authority of Government is in no way affected by the fact that such map has been superseded by a later survey map made under the same authority, and by an order of the Board of Revenue.—I. L. R., 5 Cal., 822.

A map prepared by an officer of Government, while in charge of a Khas Mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the authority of Government within the meaning of s. 83 of the Evidence Act, the accuracy of which is to be presumed, but such a map may be admitted as evidence under s. 13 of the Act.—I. L. R., 5 Cal., 287.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

Presumption as to collections of laws and reports of decisions.

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to powers-of-attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's domi-

Presumption as to certified copies of foreign judicial records.

nions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India, resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telegraphic messages.

89. The Court shall presume that every document called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to due execution, &c., of documents not produced.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the

particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

A Court is not bound to accept as genuine the signature on a document upwards of thirty years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document.—I. L. R. 6 Cal., 209.

If a document be shown to have been lost in proper custody and to be more than thirty years old, secondary evidence of its contents may be given under s. 65, cl. (c), and s. 90 of this Act.—6 C. L. R., 199.

Although ancient documents are admissible in evidence on proof that they have been produced from proper custody, their value as evidence, when admitted, must depend in each case on the corroboration derivable from external circumstances.—*e. g.*, from the documents having been produced on previous occasions *upon which they would naturally have been produced*, if in existence at the time, or from acts having been done under them, or from ancient or modern corresponding enjoyment.—9 C. L. R., 425.

No legal presumption can arise as to the genuineness of a document more than thirty years old merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court.—I. L. R., 5 Cal., 918.

Secondary evidence of the contents of a document requiring execution, which can be shown to have been lost in proper custody, and to have been lost, and which is more than thirty years old, may be admitted under s. 65, cl. (c), and s. 90 of the Evidence Act, without proof of the execution of the original.—I. L. R., 5 Cal., 886.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document,

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

As amended by Act XVIII of 1872.

In a suit, which was brought for the price of goods sold and delivered, the plaintiff swore to the fact of the sale, and tendered in evidence a written admission of the defendant, that the goods had been supplied to him. The writing was rejected as unstamped, and the suit was dismissed.

Held, that the Judge should have allowed the plaintiff an opportunity of proving by oral testimony the delivery of the goods sold, and their value.—I. L. R., 8 Calc., 282. There are other rulings to the same effect, which show that the Calcutta High Court have somewhat relaxed the strictness of sec. 91.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1.)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2.)—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3.)—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4.)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5.)—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6.)—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

A policy of insurance is effected on goods “in ships from Calcutta to London.” The goods are shipped in a particular ship which is lost.

The fact that that particular ship was orally excepted from the policy, cannot be proved.

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, cannot be proved.

(c.) An estate called 'the Rampur tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

As amended by Act XVIII of 1872.

<p>93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.</p>	<p>Exclusion of evidence to explain or amend ambiguous document.</p>
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Illustrations.

(a.) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to B, by deed, 'my estate at Rampur containing 100 bighas. A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000. 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sindh was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell a certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies

On whom burden of proof lies. on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies

Burden of proof as to particular fact. on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(a.) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

When the plaintiff has established his title to land, the burden of proving that the plaintiff has lost that title by reason of the adverse possession of the defendant, is upon the defendant.—7 C. L. R., 364.

See notes under s. 110, *infra*.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

As amended by Act XVIII of 1872.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

In a possessory suit under s. 9 of the Specific Relief Act of 1877, it is sufficient to prove prior possession and illegal dispossession. But if a man fails to bring a possessory suit, and resorts to a suit for title, he must prove possession within twelve years and also his title.—7 Bomb. H. C. R., 82. The law has fixed a period of limitation within which a party may recover possession without proof of title: if he allows that period to elapse, he must prove his title.—9 Bomb. H. C. R., 53. *Per PRINSEP, J.*, in 5 C. L. R., 278. But in the same case *MORRIS, J.*, held, that even in a regular suit for possession, the plaintiff is entitled to succeed on proof of previous possession and ouster, provided that the defendants are unable to give any proof of their right so to oust him, or of a superior title.

Where the suit is for waste or jungle lands, it is often impossible to give evidence of acts of ownership or of possession, because the property is uninhabited and uncultivated, and no acts of ownership have been exercised over it; in such cases it is often necessary to rely upon title with very slight evidence of possession, and sometimes possession of the adjoining land coupled with clear proof of title is sufficient to show that the party who has the title has also the possession.—2 C. L. R., 364.

Possession and reclamation of lands from jungle is in itself *prima facie* evidence of proprietary right as against a neighbouring proprietor. It is for the defendant to displace the presumption arising therefrom.—S.D.A., 1860, p. 356.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c.) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(*d.*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(*e.*) That judicial and official acts have been regularly performed ;

(*f.*) That the common course of business has been followed in particular cases ;

(*g.*) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(*h.*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(*i.*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (*b*)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence.

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that a certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1.)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2.)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a Police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123.. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney—‘I have committed forgery, and I wish you to defend me.’

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney—‘I wish to obtain possession of property by the use of a forged deed on which I request you to sue.’

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A’s account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

As amended by Act XVIII of 1872.

There is no privilege as to communications between mukhtars and their clients, the word ‘attorney’ being confined to attorneys of the High Court.—10 W. R., Cr., 14.

To be privileged under this section, a communication by a party to his attorney must be of a confidential or private nature.—I. L. R., 3 Bomb., 91.

Statements laid by clients before Counsel for the purpose of obtaining legal advice are privileged.—I. L. R., 4 Bom.

127. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Section 126 to apply to interpreters, &c.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

As amended by Act XVIII of 1872.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identi-

fied before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked. 143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

- Questions lawful in cross-examination.
- (1) to test his veracity;
 - (2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

The Privy Council, referring to the generality of the Principal Sadr Amin's observations as to certain witnesses having given evidence in other cases, observed, "that though it was a legitimate objection to a man's credit that he was a professional witness, yet to state broadly and generally that a witness had given evidence in other cases, and therefore became unworthy of credit, could only tend to increase the indisposition of respectable persons to come into Court as witnesses, which was one of the social evils of India."—2 Suth. P. C. 714.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

Court to decide when question shall be asked and when witness compelled to answer.

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section one hundred and forty-eight ought to be asked without reasonable grounds. asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

As to procedure in charges against pleaders or mukhtars of unprofessional or improper conduct, *see* Act XVIII, 1879. ss. 12 to 15.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him ; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

Impeaching credit of witness.

(1.) By the evidence of persons who testify that they,

from their knowledge of the witness, believe him to be unworthy of credit ;

(2.) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

As amended by Act XVIII of 1872.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Any former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

When witness may use copy of document to refresh memory.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under sections one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, jury or assessors may put any questions to the witnesses, through or by leave of the Judges, which the Judge himself might put and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

[See Section 2.]

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of His present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence ...	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX of 1853...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861	For simplifying the Procedure of the Courts of Crimmal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I of 1868 ...	The General Clauses' Act, 1868 ...	Sections seven and eight.

PART VIII.

Excise.

ACT No. VII (B. C.) OF 1878.

As amended by Act IV (B. C.), 1881, and Act I (B. C.), 1883.

An Act to consolidate and amend the Law relating to the Excise Revenue in the Presidency of Fort William in Bengal.

WHEREAS it is expedient to consolidate and amend the laws relating to the manufacture, sale, and possession of excisable articles, and to the collection of the revenue derived therefrom: it is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as “The Bengal Excise Act, 1878 :”

Extent and commencement.

2. It extends, save as is hereinafter expressly specified, to all the territories for the time being administered by the Lieutenant-Governor of Bengal, and shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

3. The enactments specified in the Schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof.

Enactments repealed.

This repeal shall not revive any office, authority, or thing abolished by any such enactment, or affect the validity of anything done or suffered, or any right, title, obligation, or liability accrued before the commencement of this Act.

And all rules prescribed, appointments made, powers conferred, licenses granted, and notifications published under any such enactment, and all other rules (if any) now in force and relating to the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred, granted, and published hereunder.

And all references made to any such enactment shall, as far as may be practicable, be deemed to be made to this Act.

And all proceedings now pending, which may have been commenced under any such enactment, shall be deemed to be commenced under this Act.

4. In this Act—unless there be
Interpretation-clause. something repugnant in the subject or context—

‘Board’ means the Board of Revenue for the provinces
for the time being administered by
‘Board.’ the Lieutenant-Governor of Bengal.

‘Collector’ includes also a Deputy Collector, or other
revenue officer in independent charge
‘Collector.’ of the district,

a Superintendent of Excise Revenue,
any covenanted or uncovenanted officer to whom the
Collector may make over, with the previous sanction of
the Commissioner (as he is hereby empowered to do), any
of his powers or duties under this Act.

‘Commissioner.’ ‘Commissioner’ means the Commissioner of a Revenue Division.

‘Excisable article’ includes spirituous and fermented
liquors and intoxicating drugs as
‘Excisable article.’ defined by this Act.

[‘Foreign excisable article’ means any excisable article
manufactured or produced at any
‘Foreign excisable article.’ place beyond the limits of British India, or at any place in British India in which no duty of excise is levied upon the manufacture or production of such article.]

Added by Act IV of 1881 (B.C.)

‘Fermented liquor’ includes—

‘Fermented liquor.’ malt liquor of all kinds ; tari, fresh or fermented ; and

pachwai, diluted or undiluted ;

any other intoxicating liquor which the Local Government may from time to time declare to be included in this definition.

‘ Intoxicating drugs ’ include—

ganja ;

‘ Intoxicating drugs.’ bhang or siddhi ;
charas ;

every preparation and admixture of any of the above ;

any other intoxicating drug which the Local Government may from time to time declare to be included in this definition.

‘ Local Government ’ means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

‘ Section.’ ‘ Section ’ means a section of this Act.

‘ Spirituous liquor ’ includes any spirituous liquor imported into India or manufactured in India by any process of distillation.

‘ Spirituous liquor.’
‘ Licensed vendor or manufacturer.’ [‘ Licensed vendor or manufacturer ’ means a vendor or manufacturer licensed under this Act.

‘ Tari.’ ‘ Tari ’ means the sap of any kind of palm tree.]

Added by Act I of 1883 (B.C.)

‘ The Town of Calcutta ’ includes all places within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal.

‘ The Town of Calcutta.’
Calcutta a separate district. For the purposes of this Act the Town of Calcutta shall be deemed to a separate district.

PART II.

MANUFACTURE OF EXCISABLE ARTICLES.

5. No person shall manufacture any excisable article, or cultivate plants from which intoxicating drugs are produced, without a license from the Collector.

Manufacture of excisable articles and cultivation of plants without license prohibited.

Construction & working of brewery without license prohibited.

6. No person shall construct or work a brewery without a license from the Collector.

7. No person shall construct or work a distillery after the manner in which distilleries are constructed and worked in Europe without a license under the signature of the Collector of the district in which such distillery is situated, or, in case the distillery is within twenty miles of Calcutta, or such other distance less than twenty miles as may from time to time be prescribed by the Local Government, without a license under the signature of the Collector of Calcutta.

8. The Board may from time to time make rules relative to the granting of licenses under the two last preceding sections, the management of distilleries and breweries established under the said sections, and the issue of spirituous and fermented liquors therefrom.

Collectors may establish native distilleries for spirituous liquors.

9. The Collector, with the sanction of the Board, may establish, at any place within his jurisdiction, a distillery in which spirituous liquors may be manufactured after native processes,

from time to time fix limits within which no such liquors, unless manufactured at the said distillery, shall be introduced or sold without a pass from the Collector, and within which no stills shall be constructed or worked, or spirituous liquors manufactured, except at the said distillery, discontinue any distillery so established.

[Nothing in this section, or in section 7, shall be held to debar the Collector, with the sanction of the Board, from granting a license for the manufacture of spirituous liquors after native processes in a distillery established under section 7.]

As amended by Act IV of 1881 (B.C.)

Board may prescribe rules for native distilleries.

10. The Board may from time to time make rules relative to the management of distilleries established under the last preceding section,

the conditions on which spirituous liquors may be manufactured in the said distilleries, and the issue of such liquors therefrom.

[10*a*. No person shall have in his possession a still for the manufacture of spirituous liquors for which he has not obtained a license.]

Possession of unlicensed still prohibited.

Added by Act I of 1883 (B.C.)

PART III.

SALE AND POSSESSION OF EXCISABLE ARTICLES.

Excisable articles not to be sold without license.

11. No person shall sell any excisable article without a license from the Collector.

Fee for wholesale license.

12. Persons taking out licenses for the wholesale vend of spirituous and fermented liquors shall pay, for every such license, such sum as the Board from time to time prescribes.

The license shall be current only in the district in which it is granted.

But travelling merchants may obtain, under such rules and restrictions as the Board from time to time may prescribe, a general license, authorizing them to sell by wholesale in any district which they may visit in the course of their travel, without taking out a fresh license for that district.

13. Persons taking out licenses for the retail sale of excisable articles, or for the establishment of outstills, and the sale of the

liquor manufactured therein, shall pay for every such license such fee or duty as may from time to time be fixed with the sanction of the Board, or a fee or duty regulated in such manner and in accordance with such rules as the Board may prescribe ;

and such fee or duty shall be specified in the license, and shall be payable at such periods as the Board may direct.

Fee for retail license.

14. The Local Government may suspend the operation of all the provisions relating to tari contained in this Act with respect to any district in which the consumption of tari in a fermented state is inconsiderable; and thereupon tari may be possessed and sold without license in any such district, notwithstanding anything contained in this Act.

[15. The sale of any excisable article in a larger quantity than is specified below shall be deemed to be a sale by wholesale, and the sale of any other quantity shall be deemed to be a retail sale: provided that the Board may from time to time by rule fix any larger quantity as the limit for a retail sale of any excisable article:

Spirituous or fermented liquors, imported by sea, two imperial gallons or twelve reputed quart bottles:

other spirituous or fermented liquors, excepting tari and pachwai, one seer, or one reputed quart bottle:

tari or pachwai, four seers.]

ganja, siddhi or bhang, or any preparation or admixture of the same, one quarter of a seer;

charas, or any preparation or admixture of the same, five tolahs weight.

No licensed wholesale vendor shall sell by retail, and no licensed retail vendor shall sell by wholesale.

Under this section a sale of an assortment of spirituous or fermented liquors in the quantity specified above, or in less quantity, by a licensed wholesale vendor, and a similar sale of such liquors in greater quantity than is specified above by a licensed retail vendor, are prohibited.

The Board may by rule define what shall be held to be an assortment for the purposes of this section.

The Board may also determine what shall be a retail sale of any article from time to time declared by the Local Government to be included in the definition of intoxicating drugs under this Act.

16. No cultivator of the plants producing ganja or
 Restriction of sale of bhang shall sell such plants, or any
 ganja and bhang. ganja or bhang produced therefrom,
 to anyone other than a person duly authorized to purchase
 the same by pass or license from the Collector.

[17. No person, not being a licensed manufacturer or
 Illegal possession. vendor or a person duly authorized to
 supply licensed vendors, shall have in
 his possession a greater quantity of any excisable article
 than that specified in section fifteen, or than the quantity
 which may be fixed by the Board under the said section as
 the limit for a retail sale of any such article.]

As amended by Act I of 1883 (B.C.)

[17a. The Board, with the sanction of the Local Govern-
 Prohibition respect- ment, may, from time to time, declare,
 ing certain foreign by a notification published in the
 excisable articles. *Calcutta Gazette*, in respect of any
 foreign excisable article, except spirituous and fermented
 liquors imported by sea and kept only for private use and
 consumption and not for sale—

(1) that the possession of such foreign excisable article
 is absolutely prohibited in any quantity whatsoever in the
 districts or tracts specified in the notification, or

(2) that such possession shall be limited to specified
 quantities unless the Collector or other officer duly author-
 ized in that behalf shall grant a license for the possession
 of a larger quantity of such article. The Board may, from
 time to time, if it think fit, fix the fee or duty payable for
 such license.]

Added by Act IV of 1881 (B.C.)

PART IV.

DUTIES.

18. No spirituous liquor shall be removed from any
 Removal of spiritu- distillery, or the warehouses connected
 ous liquor from distil- therewith, upon which duty has not
 leries. been paid at the rate leviable under
 any Tariff Act for the time being in force, or until a bond
 has been executed for such duty.

For all spirituous liquor removed upon payment of duty or under bond, passes shall be issued by the Collector, which shall specify

the quantity and description of the liquor,
the place of its destination,
the amount of the duty,
the person to whom it is consigned, and
whether the duty has been paid or secured by bond, and
the period for which the pass shall be current.

19. Spirituous liquor manufactured at any place in India beyond the limits of British India [or at any place in British India, in which no duty of excise is levied upon its manufacture,] shall, on passing the limits of the territories to which this Act applies, be charged with the duty prescribed for spirituous liquor in the last preceding section.

As amended by Act IV of 1881 (B.C.)

[19a. In respect of excisable articles manufactured in any part of British India beyond the limits of the territory to which this Act extends, the Board may from time to time with the sanction of the Local Government frame rules for prescribing the conditions under which the said articles may be imported, and where no duty has previously been paid on such articles, the conditions under which the same may be imported and bonded within such limits.]

Added by Act I of 1883 (B.C.)

PART V.

FARM OF DUTIES.

20. The Collector may, with the sanction of the Board, let in farm the duties leviabale on the retail sale of excisable articles, or any of them, in any district or division of a district.

Collector, with the sanction of the Board, may farm out the duties.

Board may prescribe rules.

21. The Board may prescribe rules—

for the invitation and acceptance of tenders for such farms,

for the requisition of security for the due fulfilment of the engagements entered into by the farmers, and

as to the form and conditions of the lease.

Any breach of such conditions shall render the lease liable to annulment.

22. When the duties leviable on any excisable articles

Farmer to make arrangements with local manufacturers and vendors.

are let in farm, the farmer shall be at liberty to make his own arrangements with the manufacturers and vendors within the limits of his farm :

and all the fines hereinafter prescribed, for the unlawful manufacture, sale, or possession of any such article, shall be incurred by all persons manufacturing, selling or possessing the same without license or authority from the farmer.

23. Every such farmer shall file in the Collector's office

List of licenses granted by farmer to be filed.

a list of all the licenses granted by him in such form as may be prescribed by the Board.

The Collector may, with the sanction of the Board,

Restrictions as to grant of licenses.

before entering into engagements for any such farm, make such reservations or restrictions with respect to the grant of licenses as he thinks fit.

24. The Collector may, with the sanction of the Board,

Lease may be cancelled.

cancel any lease granted under this Act ; or may within the period of the lease impose any new restriction on the farmer.

If a lease be cancelled for any cause other than a breach

Compensation to farmers in certain cases.

on the part of the farmer of the conditions of the lease, or if any reservation or restriction with respect to the grant of licenses be imposed within the period of the lease, the farmer shall be entitled to receive such compensation for any loss which he sustains thereby as the Board thinks fit.

25. Every farmer of excise revenue may use the same

Recovery of arrears of fee or duty by farmers.

means and processes for the recovery of any arrear of fee or duty due to him from any authorized vendor, as

may be lawfully used by zemindars and farmers of land for the recovery of arrears of rent due to them from their under-tenants.

PART VI.

LICENSES.

26. Every person taking out a license under this Act shall execute a counterpart engagement in conformity with the tenor of the license, [if required by the Collector to do so,] and shall give such security for the performance of his engagement, or make such deposit in lieu of security as the Collector may require.

As amended by Act I of 1883 (B.C.)

27. Unless the Board shall otherwise specially direct, every license shall be granted for the term of one year, and if continued to the holder thereof, shall be formally renewed from year to year.

But every person holding a license, who may intend not to renew it, shall give notice of his intention to the Collector at least fifteen days before the year expires.

If such notice be not given and the license be not recalled by the Collector, the license held, and engagement entered into, by every such person shall remain in force for such time as the Collector may think fit, as if the said license and engagement had been formally renewed.

28. The Board may regulate the form and conditions of all licenses granted under this Act.

29. The Collector may cancel any license granted under this Act, if the fee or duty therein specified be not duly paid, or in case of a violation of any other condition thereof, or of the holder being convicted of a non-bailable criminal offence ;

and in such cases the holder shall not be entitled to a

refund of any fee or duty payable under the license which he may have paid to the Collector in advance.

If the Collector desires to recall a license for any cause other than those above specified, he shall give fifteen days' previous notice *in writing* and remit a sum equal to the fee or duty for fifteen days, or, if *such* notice be not given, shall make such further compensation for default of notice as the Commissioner or Board directs.

In all such cases any fee or duty already paid in advance shall be refunded.

As amended by Act I of 1883 (B.C.)

30. Any licensed vendor may surrender his license on giving fifteen days' previous notice in *writing* to the Collector, and paying a sum equal to the fee or duty for fifteen days in addition to the sum payable under the license.

As amended by Act I of 1883 (B.C.)

PART VII.

POWERS OF OFFICERS.

31. The collection of the revenue arising from the manufacture and sale of excisable articles shall be ordinarily under the charge of the District Collectors, who shall perform the duties connected therewith under the control and direction of the Commissioners and of the Board ;

and all proceedings of Collectors shall be subject, with or without appeal, to the revision of the Commissioners ;

and all proceedings of the Collectors and Commissioners shall be similarly subject to the revision of the Board.

Suits cannot be brought against Government for acts done in exercise of sovereign powers. Where licenses were refused to a bidder who made the highest bid for some ganja and siddhi shops, and then made a deposit, and the bidder sued the Government for damages, it was held that suits such as might, previous to the passing of 21 and 22 Vict., c. 106, have been brought against the East India Company, and subsequently against the Secretary of State in Council, are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers.—I. L. R., 1 Calc., 11.

The case of *P. Chitambarum v. The Collector of Sea Customs* (10 Mad. Jur., 94) was very different. The defendant, an officer of Government, was made personally liable only because he had been guilty of conduct extravagantly *ultra vires* and tortious. Had he kept himself within the law and rules, he could not have been made liable.

Again, in the case of the *P. and O. Company v. The Secretary of State for India* (Bourke's Rep., Pt. VII, 167) it was held, that the Government of India were responsible to the plaintiffs upon the express ground that the negligence complained of was an act done by their servants in carrying on the ordinary business of ship-builders (unconnected altogether with the exercise of sovereign powers) and which any firm or individual might have carried on for the same purposes. PEACOCK, C. J., cited *Moodalay v. The E. I. Company* and *Moodalay v. Norton* (1 Br. Ch. Ca., 469), and said:—"Where an act is done on a contract entered into in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign or private individual authorized by the sovereign, no action will lie."

32. The Local Government may appoint any person to be Superintendent of Excise Revenue, or of any branch of excise revenue, in any district or place; and the person so appointed shall exercise, in such district or place, or with respect to such branch of excise revenue, all the powers and authority conferred by this Act on the Collector, and the Collector shall cease to exercise such powers and authority in such district or place, or with respect to such branch of excise revenue, during the continuance of such appointment.

33. The Local Government may also appoint a Commissioner or Commissioners for the control and direction of the officers having charge of the excise revenue in any district or districts; and when such appointment is made, the Commissioner of Excise shall exercise, within such district or districts, the powers and authority conferred by this Act on Commissioners of Revenue, and the Revenue Commissioner shall cease to exercise such powers and authority in such district or districts during the continuance of such appointment.

34. Collectors may appoint such officers as are necessary for the collection of the excise revenue and for the prevention of smuggling and the officers so appointed shall, in addition to their ordinary designations, be styled Excise-Officers.

35. The Board may regulate the mode in which tari shall be supplied to licensed vendors of the same; and may frame rules for the grant of licenses or passes to persons purchasing, transporting, or storing ganja, bhang or siddhi, or charas for the supply of the licensed vendors of those drugs.

The Board may also place the cultivation, preparation, and store of such drugs under such supervision as may be deemed necessary to secure the duty leviable thereon.

36. The Collector may recover any arrear of fee or duty due on account of any license granted under this Act,

or any arrear due from any farmer of excise revenue, by distress and sale of the moveable property of the person from whom the arrear is due, or of his surety, or by the process described in Bengal Act VII of 1868.

37. The Collector may, by a warrant under his hand, authorize any excise-officer above the rank of a peon to enter and inspect at all times, by day or by night, and may similarly authorize any excise-officer to enter and inspect, at all times by day, the shop or premises in which any licensed manufacturer or retail vendor carries on the manufacture of spirituous or fermented liquors, or the sale of excisable articles.

38. The Collector may, by a warrant under his hand, authorize any excise-officer to stop and detain all persons carrying any excisable articles liable to confiscation under section 75;

and any excise-officer so authorized may seize such articles, and arrest the person in possession of the same.

39. Any excise-officer above the rank of a peon may arrest any person having in his possession an unlicensed still, or any excisable article liable to confiscation under section 75, or engaged in the unlawful manufacture or sale of such excisable articles,

and may seize such still with all such articles, and the materials used in such manufacture.

40. Whenever any excise-officer above the rank of a peon

And to search on in- has reason to believe, from inform-
formation of illicit ation given by any person (which
manufacture or posses- information shall be taken down in
sion. writing),

that any excisable articles are unlawfully manufactured ;
or that any excisable articles, liable to confiscation
under section 75, are kept or concealed in any house, boat,
or other place,

such officer may, but always in the presence of an officer
of police not being under the grade of a corporal or head
constable, enter into any such house, boat, or place ;

and in case of resistance, may break open any door, and
force and remove any other obstacle to such entry ;

and may seize and carry away all stills and materials
used in such manufacture and all such excisable articles ;

and may also arrest the occupier of the house, boat, or
place, with all other persons concerned in the manufacture
of such articles, or in the keeping and concealing of the
same.

41. The Local Government may confer on the officers
of the Police, Customs, and Revenue

Officers of the Police,
Customs, and Revenue
Departments may be
vested with same powers
as excise officers.

Departments, or any of them, the
powers given to excise-officers by the
two last preceding sections with res-
pect to the seizure of, and search for,
excisable articles and the arrest of persons in possession
thereof.

All officers so empowered shall be deemed to be excise-
officers within the meaning of this Act.

42. The said powers may, in the town of Calcutta, also

Similar powers to be be exercised by any police-officers
exercised by police-offi- specially selected by the Commis-
sioner of Police for such purpose ;
sioner of Police for such purpose ;
sioner of Police for such purpose ;

and the powers which are conferred upon the Collector
by this Act, as regards the issue of warrants directed to
excise-officers, may also be exercised by the Commissioner
of Police for the said town in respect of the issue of war-
rants directed to police-officers selected as aforesaid :

provided that the Collector shall not issue a warrant
directed to a police-officer, nor shall the Commissioner of
Police issue a warrant directed to an excise-officer.

43. Any excise or police-officer above the rank of peon or constable, who has reason to believe that any chemist, druggist, apothecary, or keeper of a dispensary within the town or the suburbs of Calcutta, or in Howrah, allows, between sunset and sunrise, spirituous or fermented liquors, which have not been *bonâ fide* medicated, to be drunk on his business premises by any person not employed in his business, may enter upon such premises, and seize and carry away such liquors,

and, in case of resistance, break open any door and force and remove any other obstacle to such entry or seizure, and arrest and detain the owner or occupier of the said premises, with all parties concerned in such unlawful drinking.

44. Whenever an excise-officer makes any arrest, seizure, or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the same to his official superior, and to take the person arrested to the Magistrate. Excise-officer to report every arrest, seizure or search to his official superior, and to take the person arrested to the Magistrate. or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the same to his official superior, and, unless acting under the warrant of the Collector, shall carry the person arrested, or the article seized, with all convenient despatch, to a Magistrate, or, if the arrest, seizure, or search has been made in the town of Calcutta, to a Presidency Magistrate.

45. Whenever any police-officer in the town of Calcutta makes any arrest, seizure, or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars to the Commissioner of Police, and shall carry the person arrested, or the article seized, with all convenient despatch, to a Presidency Magistrate; Police-officer in Calcutta to make report to Commissioner of Police. makes any arrest, seizure, or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars to the Commissioner of Police, and shall carry the person arrested, or the article seized, with all convenient despatch, to a Presidency Magistrate;

and the Commissioner of Police shall at once inform the Collector of the fact of the arrest or seizure, and of the circumstances of the case.

46. The Collector may issue his warrant for the arrest of any person whom he may have reason to believe, either from information in writing or from the proceedings in any other case, to be engaged in the unlawful sale Collector may issue warrant of arrest in certain cases. of any person whom he may have reason to believe, either from information in writing or from the proceedings in any other case, to be engaged in the unlawful sale

of excisable articles, or to have in his possession any such articles liable to confiscation under section 75.

47. The Collector may issue his warrant for the search of any house, boat, or other place in which he may have reason to believe that excisable articles are unlawfully manufactured, or that any such articles liable to confiscation under this Act are kept or concealed.

Such warrant may be executed by any officer, not being under the rank of a corporal or head constable, in the manner prescribed in section 40.

48. Whenever any person is arrested, or any articles are seized under the warrant of a Collector, the Collector, after such enquiry as he thinks necessary, shall send the person arrested, or the article seized, to a Magistrate, or, if the arrest or seizure has been made in the town of Calcutta, to a Presidency Magistrate, or shall order the immediate discharge of such person, or the release of such articles.

49. Every such Magistrate shall issue a summons requiring the attendance of the person accused in all cases other than those of persons sent in custody by a Collector or excise-officer.

50. Any excisable articles sold in contravention of the provisions of this Act, or in breach of any of the conditions of a license granted under this Act, may be seized at the time of the sale and brought before every such Magistrate.

As soon as the case is adjudicated, they shall be restored to the person who may have purchased them or disposed of as the Magistrate may direct.

51. Where there is ground to suspect that excisable articles are unlawfully concealed in any zenana, the officer charged with the execution of a warrant shall, except in the town of Calcutta, follow the provisions of sections 384, 385 and 386 of the Code of Criminal Procedure, and, in the said town, the provisions of sections 164, 165 and 166 of the Presidency Magistrates' Act.

52. All police-officers are required to aid excise-officers in the due execution of this Act, Police-officers to assist excise-officers on request upon notice given or request made by such officers.

PART VIII.

PENALTIES.

53. Whoever manufactures or sells any excisable article without a license shall be liable For unlicensed manufacture or sale of excisable articles. to a fine not exceeding five hundred rupees for every such manufacture or sale.

[Nothing contained in the first clause of this section or in section eleven applies to the arrangements under which tari is supplied to licensed retail vendors, or to the sale of tari or of any preparation of the same, when supplied or used for the manufacture of gur or molasses.]

Or to the sale of any imported spirituous or fermented liquors purchased by any person for his private use, and so disposed of upon such person quitting a station or after his decease.

As amended by Act I of 1883 (B.C.)

54. Whoever, without a license from the Collector, cultivates plants from which intoxicating drugs are produced, or in any way promotes such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, and the plant so cultivated shall be liable to seizure and confiscation. For unlicensed cultivation of plants producing intoxicating drugs, and abetment of the same.

55. Whoever constructs or works a distillery after the European method, or a brewery, without a license from the Collector, shall be liable for every such offence to a fine not exceeding one thousand rupees; For constructing or working distillery or brewery without license.

and all liquors manufactured at any such distillery or brewery, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

56. Every proprietor or manager of a licensed distillery constructed and worked after the European method, or of a brewery, who wilfully contravenes any rule made by the Board under section 8, shall be liable for every such offence to a fine not exceeding two hundred rupees.

For contravention of rules prescribed by Board in respect of distillery or brewery.

57. Whoever removes, or attempts to remove, from any licensed distillery constructed and worked after the European method, or from any brewery, any spirituous or fermented liquors upon which the duty has not been paid, or for the duty on which a bond has not been executed, or any such liquors for which the Collector has not issued a pass, or exceeding the quantity for which a pass has been issued, shall be liable for every such offence to a fine not exceeding one thousand rupees.

For illegal removal of spirituous or fermented liquors from European distillery or from a brewery.

58. Whoever removes, or attempts to remove, any spirituous liquors from a distillery established under section 9 without a pass, or exceeding the quantity for which a pass has been issued,

or introduces, or attempts to introduce, any spirituous liquors manufactured at another place into the limits fixed for the consumption of such liquors manufactured at such distillery, without a special pass from the Collector,

[shall be liable for every such offence (the provisions of section 17 notwithstanding) to a fine not exceeding five hundred rupees.]

As amended by Act IV of 1881 (B. C.) The words "for sale" have been omitted after "introduce."

59. Every manufacturer or vendor under this Act who fails to produce his license on the demand of any excise-officer, or who commits any act in breach of any of the conditions of his license not otherwise provided for in this Act,

For refusing to produce license on demand of excise-officer, or for breach of license.

or who wilfully contravenes any rule made by the Board under section 10, otherwise than as provided in the last preceding section,

shall be liable for every such offence to a fine not exceeding fifty rupees,

and such fine shall be recoverable from such manufacturer or vendor, notwithstanding that such breach may have been owing to the default or carelessness of the servant or other persons employed by him.

Where two servants of a licensed vendor were charged with committing two breaches of the conditions of the license, held, that the maximum fine might be inflicted for each breach.

The excise-officer, to whom a licensed vendor is bound to show his license, must be an excise-officer of the higher grades, and not any police-officer who may be exercising the powers of an excise-officer.—I. L. R., 8 Calc., 207.

60. Every licensed retail vendor who sells by wholesale,

On retail vendor for selling wholesale, and on wholesale vendor for selling by retail. and every licensed wholesale vendor who makes a retail sale, shall be liable for every such offence to a fine not exceeding two hundred rupees.

Nothing contained in the first clause of this section shall be held to prohibit the grant to the same person of both wholesale and retail licenses, subject to the provisions of this Act; [or shall be held to apply to the sale by licensed wholesale vendors of such small quantities of beer, wines or spirits, as may appear to the Collector to be used only as samples.]

As amended by Act I of 1883 (B. C.)

The licensed retail vendor himself is the only person liable to conviction under s. 60. See last paragraph of s. 59.—I. L. R., 6 Calc., 832.

61. Any person other than a licensed manufacturer or vendor, or a person duly authorized to

For possessing a greater quantity of any excisable article than is specified in section 15 without license or pass. supply licensed vendors, having in his possession any greater quantity of any excisable article or any preparation or admixture of the same than the quantity specified for each article in section 15, [or than the quantity which may be fixed by the Board under the said section as the limit for a retail sale of any such article,] without a pass from the Collector or other officer empowered in that behalf, shall be liable to a fine not exceeding five hundred rupees.

Nothing contained in the first clause of this section, or in section 17, applies to any spirituous or fermented liquors

imported by sea in the possession of any common carrier or warehouseman as such, or which any person may have in his possession for his private use and consumption and not for sale.

As amended by Acts I of 1883 (B. C.) and IV of 1881 (B. C.)

The Board may raise the limit of retail sale. The law has been altered in consequence of the ruling in the case of *Empress v. Kola Lolang*, 10 C. L. R., 155.

“ 61a. Any person who, in contravention of any notification issued under section 17a, is found in possession of any foreign excisable article, or of a larger quantity of any such article than is permitted under such notification, shall be liable to a fine not exceeding five hundred rupees.”

Added by Act IV of 1881 (B. C.)

Section 12 of Act I of 1883 (B. C.) is as follows:—In the second paragraph of s. 61 the following words shall be inserted after the word “article,” that is to say: “in the possession of any common carrier or warehouseman as such, or.” But this section has already been amended by Act IV of 1881 (B. C.) and the word article does not occur in the second paragraph.

62. The provisions of section 61, so far as they relate to the possession of fermented liquors, do not apply to the possession of tárí when supplied or used for the manufacture of gúr or molasses; and the provisions of the said section, so far as they relate to the possession of intoxicating drugs, do not apply to the possession of such drugs by any person duly authorized under this Act to cultivate the plants which produce these drugs.

63. But every such cultivator selling or parting with any such plant, or any preparation thereof, to any person other than a licensed vendor, or person duly authorized to purchase the same by pass or license from the Collector, or failing to account for any quantity of such plant, or of any preparation thereof, which has been in his possession, shall be liable to a fine not exceeding five hundred rupees.

64.—[*Repealed by Act IV (B. C.) of 1881, Section 2.*]

65. Every proprietor, farmer, tehsildar, gomastah, or other manager of land, who authorizes or connives at the manufacture or sale of any excisable articles by any unlicensed person, shall be liable for every such offence to a fine not exceeding five hundred rupees.

66. Any chemist, druggist, apothecary, or keeper of a dispensary within the town or the suburbs of Calcutta, or in Howrah, who shall, between sunset and sunrise, allow spirituous or fermented liquors which have not been *bonâ fide* medicated to be drunk on his business premises by any person not employed in his business, and any such person who shall, between sunset and sunrise, drink such liquors on such premises, shall be liable to a fine not exceeding two hundred rupees, in addition to any other penalty to which he may be liable under this or any other Act.

67. Every licensed vendor who permits drunkenness, riot, or gaming in his shop, or receives any wearing apparel or other effects in barter for any excisable article, shall be liable for every such offence to a fine not exceeding two hundred rupees.

68. Any police-officer who, without lawful excuse, neglects or refuses to assist an excise-officer on being required to do so shall be liable to a fine not exceeding five hundred rupees.

69. Any excise-officer who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any house, boat, or other place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any excisable article liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

shall be liable for every such offence to a fine not exceeding five hundred rupees.

70. Any excise-officer who connives at the unlawful

On excise-officer for manufacture or sale of excisable articles,
 conniving at unlawful manufacture or sale.

and any officer invested with local jurisdiction who authorizes or connives at the establishment of any unlicensed shop for the sale of such articles in any place subject to his control,

shall be liable for every such offence to a fine not exceeding five hundred rupees.

71. Any excise or police-officer who neglects to report the particulars of an arrest, seizure, or search within twenty-four hours thereafter,

On excise-officer for delay in reporting arrest, &c., or in carrying person arrested to Magistrate or Collector.

or delays carrying to a Magistrate or to the Collector, as the case may be, any

person arrested, or any illicit articles seized under this Act,

shall be liable for every such offence to a fine not exceeding two hundred rupees.

72. All fines prescribed for offences against the provisions of this Act, and all seizures of

Adjudication of fines and seizures.

goods liable to confiscation under this Act, shall be adjudged by a Magis-

trate, and, in the Town of Calcutta, by a Presidency Magistrate,

but no proceedings shall be taken by any such Magistrate after the expiration of six calendar months from the date of the commission of the offence.

All such fines and seizures shall be adjudged on the information of the Collector or any excise-officer; but such information shall not be necessary in the case of a complaint preferred under any of the five last preceding sections.

73. The Collector, in respect of the duties to be performed by him under this Act, may

Penalty for contempt of Court.

punish any contempt committed in his presence in open Court by fine not exceeding two hundred rupees.

74. Whenever any person is convicted of an offence

Punishment on second or subsequent conviction.

against the provisions of this Act, punishable with a fine of two hundred rupees or upwards, after having been

previously convicted of a like offence, he shall be liable,

in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months ;

and a like punishment of imprisonment, not exceeding six months, shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

Imprisonment under this Act may be either simple or rigorous, as the Magistrate or Presidency Magistrate may direct.

The provisions of s. 74 as to additional punishment contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of Rs. 200 or upwards, and being again convicted of another offence punishable with the same punishment ; it is not necessary that he should have been previously convicted of *the same* offence.—I. L. R., 6 Cal., 575.

75. Any excisable article manufactured, or held in possession, in contravention of the provisions of this Act, and all the materials used, or intended to be used, in the manufacture of the same, *shall be liable to seizure by an officer duly empowered in that behalf, and to confiscation.*

When any articles liable to confiscation under this Act are seized, the vessels, packages, and coverings in which they are contained, and the animals and conveyances used in carrying them, shall also be liable to seizure and confiscation.

As amended by Act IV of 1881 (B. C.)

76. All confiscated articles shall be made over to the Collector for sale or disposal under such rules as the Board may prescribe.

77. Whenever any fine is levied under this Act from a person convicted of the unlawful manufacture, sale, purchase, or possession of any excisable article,

or of the unlawful cultivation of plants from which intoxicating drugs are produced,

the Magistrate shall inform the Collector of such levy, and the Collector may, under such rules as the Board may prescribe, direct the amount of such fine to be divided, in such proportions as he may think fit, among any persons who were instrumental in the detection of the offence, the seizure of the articles in respect of which the offence was committed, or the capture of the offender ;

and may award compensation thereout to any persons subjected to annoyance or injury by any proceedings under this Act.

78. The Board may, either before or after the adjudication of a case, grant such reward, not exceeding two hundred rupees, as to them may seem fit ;

Board may grant rewards.

and may direct the same to be divided, in such proportions as they may think fit, between any persons who were instrumental in the detection of the offence, the seizure of the articles in respect of which the offence was committed, or the capture of the offender.

79. The Board may appropriate any portion, not exceeding one-half, of the fines levied under this Act, the disposal of which is not specially provided for, for rewarding informers, or for compensating persons subjected to annoyance or injury by any proceedings under this Act.

Disposal of fines.

PART IX.

MILITARY CANTONMENTS.

80. Within the limits of any military cantonment, and within a distance of two miles, or such other distance as the Local Government may in any case prescribe, from such limits, licenses for the manufacture and sale of excisable articles shall not be granted, nor shall the duties leviable thereon be let in farm otherwise than with the consent of the Commanding Officer ; and upon the requisition of such officer any license which has been granted, either by the Collector or by a farmer, within such limits or distance, shall be immediately withdrawn.

Manufacture and sale of excisable articles in military cantonments.

81. In all other respects the provisions of this Act shall have effect within such limits and distance as aforesaid.

Mode of making arrest or search within military cantonments.

Provided that, when arrest or search is to be made within the limits of any cantonment, the Collector or other officer authorized to make arrest or search shall, whenever it may be practicable, give previous notice to the Com-

manding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

PART X.

MISCELLANEOUS.

82. The local Government may, by notification in the *Calcutta Gazette*, within any specified tract of country, exempt any excisable article or foreign excisable article from all or any of the provisions of this Act, and may, from time to time, by a like notification, cancel such exemption.

As amended by Act IV of 1881 (B. C.)

83. An appeal shall lie to the Commissioner against every order of a Collector under this Act, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the order appealed against.

An appeal shall lie to the Board against every order of a Commissioner under this Act, if presented to the Board within sixty days from the date of the order appealed against.

Provided that it shall be discretionary with the Board to receive appeals direct from orders passed by a Collector.

84. Notwithstanding anything contained in this or in any other Act, the Local Government may, with the sanction of the Governor General in Council, assign to the Corporation of the Town of Calcutta, or to any other Municipality, such functions and powers as it shall think fit in respect to the granting, withholding, and withdrawal, of licenses for the sale of excisable articles (being functions and powers which, but for such assignment, might legally be exercised by any officer of Government), to be exercised by such Corporation or by such Municipality within the limits of their respective jurisdictions under such conditions and subject to such rules as the Local Government may impose;

and the Local Government may at any time withdraw and revoke any functions and powers which it has assigned under this section.

Provided that such functions and powers shall not be assigned as aforesaid without the consent of the said Corporation or the Municipality concerned:

Provided also that no such conditions or rules shall be imposed by the Local Government after such assignment has taken place without the consent of the said Corporation or the Municipality concerned.

85. Nothing contained in this Act shall be held to affect the provisions of Act XXII of 1864 (*an Act to make provision for the Administration of Military Cantonments*) or of the Sea Customs Act, 1878, or of Bengal Acts II and IV of 1866.

Saving of Cantonment Act and Sea Customs Act.

SCHEDULE.

(See Section 3.)

PART I.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
Act XI of 1849 ...	For securing the abkaree revenue of Calcutta.	So much as has not been repealed.
Act XXI of 1856 ...	To consolidate and amend the akbaree law in Bengal.	So much as has not been repealed.

PART II.—ACTS OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
Act III of 1873 ...	To amend Act XI of 1849 and Act XXI of 1856.	The whole.
Act I of 1874 ...	To amend Act XXI of 1856 and Bengal Act II of 1866.	So far as it relates to Act XXI of 1856.
Act II of 1876 ...	To amend Act XI of 1849, Act XXI of 1856 and Bengal Act IV of 1866.	So much as has not been repealed, except section 12.

PART IX.

Lakhiraj Grants and Service Tenures.

REGULATION XIX OF 1793.

*A Regulation for re-enacting, with modifications, the rules passed by the Governor General in Council, on the 1st December, 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants not being of the description of those termed bádsháhí or royal; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged or become liable to the payment of public revenue.**

1. BY the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bíghá of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter.

As a necessary consequence of this law, if a zamíndár made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction.

Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution.

Previous, however, to the Company's accession to the Díwání, numerous grants of this description were made,

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

not only by the zamíndárs, but by the officers of Government appointed to the temporary superintendence of the collection of the revenue, under the pretext that the produce of the lands was to be applied to religious or charitable uses.

Of these grants some were applied to the purposes for which they were professed to have been made, but, in general, they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies.

In conformity to the principles which prevailed under the Native Administration, the British Government have at various times declared all grants for holding land exempt from the payment of revenue made since the date of the Company's accession to the Díwání, without their sanction, illegal and void.

Their lenity, however, induced them to adopt it as a principle, that grants of this description made previous to the date of the Díwání, and provided the grantees had obtained possession, should be held valid to the extent of the intentions of the grantor, as ascertainable from the terms of the writings by which the grants might have been made, or from their nature and denomination.

But no complete register of these exempted lands having been formed upon the Company's accession to the Díwání, nor subsequent to that period, many zamíndárs, as well as the temporary farmers of the public revenue, and the officers of Government to whom the collection of the revenue in the different districts has been occasionally committed, in consequence of the zamíndárs refusing to pay the revenue demanded of them, have availed themselves of the above-mentioned rule of limitation, to make grants of extensive tracts of land to others, or in the names of their relations or dependants, for their own use, dating the deeds for these alienations previous to the Company's accession to the Díwání, or procuring them to be registered in the zamíndarí records as having been alienated prior to that period.

Others have made such alienations without antedating the grants, and left it to the grantee to maintain himself in possession by such means as circumstances might afford, in the event of his title being brought into question.

The Governor General in Council deeming it incumbent on him to recover the public dues thus alienated in opposition to the ancient and existing laws of the country, as well as to resume the revenue of all lands the grants for which might expire; and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated by themselves or others, the amount, in both cases, being excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the Decennial Settlement, and which has been re-enacted by section 36, Regulation VIII, 1793, that the jama assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority; and by the third clause of the seventh article of the Proclamation contained in Regulation I, 1793, which specifies the conditions under which Government declared the Decennial Settlement permanent, it is expressly stipulated, that the Governor General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles.

The Governor General in Council, however, at the same time that he is desirous of recovering the public dues from lands which have been illegally alienated, is equally solicitous that persons holding such grants under titles that are declared valid should be secured in the possession and enjoyment of their property.

It is likewise his wish that the recovery of the dues of Government from those lands which have been illegally alienated previous to the 1st December, 1790, should be attended with as little distress as possible to the possessors; and to obviate all injustice or extortion in the inquiry into the titles of persons holding exempted lands, he has further resolved that the claims of the public on their lands (provided they register the grants as required in this Regulation) shall be tried in the Courts of judicature, that no such exempted lands may be subjected to the paym

of revenue, until the titles of the proprietor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made, to the prejudice of the security of the public revenue which has been assessed in perpetuity upon the estates of individuals; and further that Government and the officers employed in the collection of the public revenue may at all times have in their possession a correct register of the lands in the several zilas held exempt from the payment of revenue, the following rules, containing the rules passed on the 1st December, 1790, with modifications, have been enacted.

In a leading case (8 B. L. R., 566), their Lordships of the Privy Council thus reviewed the law relating to lákhiraj tenures:—

“The foundation of that law is well known to be Reg. XIX of 1793. It divided the then subsisting lákhiraj tenures into two classes, *viz.*, those created by grants previous to the 12th August, 1765, and those created by grants between that date and the 1st December, 1790. The former by s. 2 were subject to certain conditions, declared to be valid. The latter, with certain exceptions, and subject to certain conditions, were, by s. 3, declared to be invalid. The Regulation then goes on to subdivide the invalid and resumable tenures into two classes, *viz.*, those which comprised lands not exceeding 100 bíghás, and those which comprised lands in excess of that quantity. The revenue which might thereafter be assessed on the former was declared to belong to the zamindár or talookdar within whose estate the lands were situate; and that which might be assessed on the latter was declared to belong to Government (by ss. 6 and 7), and thus the power of bringing a resumption suit to impeach a lákhiraj tenure existing at the date of the Decennial Settlement, and to have revenue or rent assessed thereon, came to belong to the Government or to private proprietors, according to the quantity of land comprised in such tenure. The Regulation then proceeds (s. 10) to legislate against the future conversion of any rent-paying lands comprised in the Decennial Settlement into rent-free lands. It is obvious that the provisions of the 10th section relate solely to lands which, on the 1st December, 1790, were *mâl* or rent-paying lands; that it treats the grant of a rent-free tenure in such lands not as voidable but as absolutely void; that it reserves to the Government no right in such lands unless they happened to be held khas; and that it positively declared that no length of possession should give validity to any such grant. It further expressly authorized the landowner to dispossess the grantee by the high-hand without having recourse to the machinery provided by other sections of the Regulation for the resumption, or assessment of resumable lákhiraj tenures, or to any other legal proceeding.

The machinery provided for resumption suits by this Regulation was modified by subsequent Regulations, and in particular by Reg. II of

In process of time landowners seeking to enforce their rights under the 10th section seem to have found it expedient to do so by in the proceedings rather than in the summary manner authorized. Judi-

cial decisions, however, distinguished between suits under the 10th section and ordinary resumption suits, whether brought by Government or individual proprietors, under the earlier sections of the Regulation. It was decided in the case of the *Moharajah of Burdwan* (4 Moore's I. A., 466), that the right of the Government to resume a voidable *lakhiraj* tenure comprising more than 100 *bighas* was subject to the sixty years' limitation; and that by parity of reasoning the right of a *zamindar* to resume a voidable *lakhiraj* tenure comprising less than 100 *bighas* was subject to the twelve years' limitation. On the other hand, the Courts, having regard to the wording of s. 10, came to the conclusion that the claim of a landholder under this section was subject to no limitation. Notwithstanding, however, these distinctions between the two rights and the suits to enforce them, a loose practice seems to have sprung up, under which landowners, claiming the right to assess lands held and enjoyed rent-free, brought their suits generally under Reg. II of 1819, without specifying whether they were seeking to enforce the right given to them by the 7th and 9th sections of Reg. XIX of 1793, or that given to them by the 10th section. The result was that the stringent provisions of Reg. II of 1819, and of the other Regulations *in pari materia*, were indiscriminately applied; and that in all cases the burthen was cast upon the defendant of proving by the production of ancient documents that his tenure existed before the 1st December, 1790. If he established this, he would probably succeed, whether his ancient *lakhiraj* tenure was voidable or not, the suit, unless the plaintiff happened to be an auction-purchaser at a Government sale, being barred by limitation.

So stood the law and practice until Act X of 1859 was passed. Sec. 28 of that Act repealed so much of s. 10, Reg. XIX of 1793, as authorized the landowner to dispossess summarily; it provided that landowners should take proceedings before the Collector; and it fixed a period within which suits were to be brought.

Between the passing of Act X and the year 1865, the Courts of Bengal seem to have been somewhat divided as to the mode of enforcement of claims under s. 10, Reg. XIX of 1793. On reference, a Full Bench held, (1) that the jurisdiction of the Civil Courts was not affected by s. 28 of Act X; and (2) that suits to resume were unaffected by the passing of Reg. II, 1819, s. 30, of which the proper operation was limited to suits for the resumption of *lakhiraj* existing prior to the 1st December, 1790.

Their Lordships held, that the plaintiff must prove a *prima facie* case. His case is that his *mâl* land has since 1790 been converted into *lakhiraj*. He is surely bound to give some evidence that his land was once *mâl*. He may do it by proving payment of rent at some time since 1790, or by documentary or other proof that the land in question formed part of the *mâl* assets of the Decennial Settlement of the estate. His *prima facie* case once proved, the burthen of proof is shifted on the defendant, who must make out that his tenure existed before December, 1790. An admission by a defendant that his lands lie within the ambit of the plaintiff's estate, does not amount to an admission that they have ever been *mâl* lands.

2. *First*.—All grants for holding land exempt from the payment of revenue made previous to the 12th August, 1765, the date of the Company's accession to the *Díwání*, by whatever authority, and whether

Validity of grants of alienated land made before and after 12th August, 1765.

by a writing or without a writing, shall be deemed valid, provided the grantee actually and *bond fide* obtained possession of the land so granted previous to the date above-mentioned, and the land shall not have been subsequently rendered subject to the payment of revenue by the officers or the orders of Government.

If it shall be proved, to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previous to the date of the Company's accession to the *Díwání*, and of it being proved, to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to the Governor General in Council, to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue; and upon receiving the determination of the Governor General in Council, the Court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any Zila or City Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent jurisdiction within the twelve years.

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold land now subject to the payment of revenue, under grant made previous to the Company's accession to Dīwānī, the writing for which may expressly specify have been given for the life of the grantee only: or posing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure according to the ancient usages of the country.

Fourth.—Nor to entitle the heirs of any person holding land exempt from the payment of public revenue under grant made previous to the Dīwānī, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, if the writing for such grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the writing, the writing not to be forthcoming, or no writing to have been executed, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure according to the ancient usages of the country.

Nor to entitle the heir to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise; unless it shall be proved, to the satisfaction of the Court, that the grant, from the nature and denomination of it, is hereditary according to the ancient usages of the country.

But upon the demise of the present possessor of any such grant, which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the date of the Dīwānī, the lands shall not be subjected to the payment of revenue under the decree without the sanction of the Governor General in Council, to whom a copy of the proceedings and decree of the Court is to be

transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue or not, as may appear to him proper.

Fifth.—The present possessors of lands now exempt from the payment of revenue, under such life-grants made previous to the *Díwání*, and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or engaging the revenue of them for a longer period than own lives, and all such transfers and mortgages are declared illegal and void.

It is to be understood, however, that if any such life-grants shall have been confirmed as hereditary tenures by Government, or by the officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessor, and are to be excepted from the other rules contained in this and the preceding clause.

If doubts shall arise in any Court as to the competency of the authority of any officer of Government to confirm any such life-grant as hereditary, the Court is to suspend its judgment, and report the circumstances to the Governor General in Council, to whom a power is reserved of determining, finally, whether such officer possessed competent authority to confirm the grant as hereditary or not, and the Court, upon receiving the determination of the Governor General in Council, is to decide accordingly.

3. *First.*—All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, and previous to the 1st December, 1790, corresponding with the 18th Aghan, 1197, Bengal era, the 10th Aghan, 1198, Faslí, the 18th Aghan, 1198, Wiláiyatí, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Second.—If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the

Courts how to proceed, in case of doubt of authority of officer confirming grant.

case to the Governor General in Council, to whom a power is reserved of determining, finally, whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the Governor General in Council, shall decide accordingly.

Third.—The rule contained in clause first is not to be considered to extend to authorize the subjecting to the payment of revenue of land held exempt from the payment of it under grants made previous to the commencement of the Bengal year 1178, or the Faslí or Wiláiyatí year 1179 (according as the land may be situated in Bengal, Bihár or Orissa), under the signature of the chiefs of the late provincial councils and the seals of those councils, agreeably to an authority vested in them by Government for granting land to be held exempt from the payment of revenue, the annual produce of which did not exceed one hundred rupees.

Fourth.—Nor to authorize the subjecting to the payment of revenue any land, the grants for which, whether for the life of the grantee or otherwise, were made previous to the commencement of the Bengal year 1178, or the Faslí or Wiláiyatí year 1179 (according as the land may be situated in Bengal, Bihár or Orissa), where the quantity of land granted shall not exceed ten bighás, and the produce of it is *bonâ fide* appropriated as an endowment on temples, or to the maintenance of Bráhmans, or other religious or charitable purposes.

The rule in this clause is declared to extend, also, to all grants of land whatever, not exceeding ten bighás, made previous to the Díwání, the produce of which may be now so appropriated.

4. This Regulation, as far as regards lands alienated previous to the 1st December, 1790, respects only the question whether they are liable to the payment of revenue or otherwise.

Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity to this Regulation, may become subject to the payment of revenue, is to be considered as a matter of a private

nature, to be determined by the Courts of Díwání Adáwlut, in the event of any dispute or claim arising respecting it between the grantee and the grantor, or their respective heirs or successors.

The grantees, or the present possessors, until dispossessed by a decree of the Díwání Adálat, are to be considered as the proprietors of the lands, with the same right of property therein as is declared to be vested in proprietors of estates or dependent taluqs (according as the land may exceed or be less than one hundred bighás as specified in sections 6, 7 and 21) subject to the payment of revenue, and they are to execute engagements for the revenue with which their lands may be declared chargeable, either to Government, or to the proprietor or farmer of the estate in which the lands may be situated, or to the officer of Government (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected khás), under the rules for the decennial settlement.

If by the decision of the Díwání Adálat the proprietary right in the land shall be transferred, the person succeeding thereto is, in like manner, to be responsible for the payment of the revenue assessed or chargeable thereon.

On resumption of a *hukamee* grant, the settlement was made with the maliks, and continued in force for five years. It was subsequently made with the disseised lákhirájdárs, who sued the maliks for wasilat for the five years in question. *Held*, that, as the maliks had been granted the settlement by competent authority, the claim to wasilat was invalid.—S. D. A., 1858, 1193.

5. By continuing the proprietary right in the land to the grantee or possessor, in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections a liberal provision will be left to him.

Where the grant may have been made before the Bengal year 1178, or the Faslí or Wiláiyatí year 1179, the proprietor will hold his land as an estate paying a fixed revenue of only half the amount assessed on other málguzárí lands in the country;

and where the grant may have been made subsequent to

the above-mentioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue, under the rules for the decennial settlement, as hereafter directed.

6. The revenue assessable under section 9 on land not

To whom revenue assessed on lands, not exceeding 100 bighás, alienated before 1st December, 1790, is to belong.

exceeding one hundred bighás of the measurement that may prevail in the pargana wherein it may be situated, and whether lying in one village, or two or more villages, and that may have been alienated by any one grant

made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependent taluq in which the land may be situated, notwithstanding anything said in section 8, Regulation I, 1793 ;

and he shall not be liable to the payment of any additional revenue on account of the assessment which may be chargeable on such lands during the continuance of the engagement under which he may pay the revenue of such estate or dependent taluq, when the land may be so adjudged liable to the payment of revenue.

If the estate or dependent taluq shall be held khás, when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to, whomsoever the rents and revenue of the estate or taluq may be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor or a farmer.

The land which may be so adjudged subject to the payment of the revenue is to be considered as a dependent taluq.

7. The revenue assessable under section 8 on land

Revenue on lands exceeding 100 bighás alienated prior to 1st December, 1790, to belong to Government.

exceeding one hundred bighás of the measurement that may prevail in the pargana wherein it may be situated, and whether lying in one village, or two or more villages, and alienated

by any one grant made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, is declared to belong to Government.

The lands specified in this section, which may be adjudged

liable to the payment of revenue, are to be considered as independent taluqs.

8. *First.*—The amount of the revenue payable from the lands specified in section 7 is to be adjusted according to the following rules.

Rules for assessment under section 7.

Second.—If the grants shall have been made previous to the Bengal year 1178, or the Fasli or Wilaiyati year 1179 (according as the lands may be situated in Bengal, Bihár or Orissa), the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculating according to the rates at which other lands in the pargana of a similar description may be assessed.

If grant made previous to Bengal year 1178, or Fasli or Wilaiyati year 1179.

If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such rasad or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated land, as the Board of Revenue, with the sanction of the Governor General in Council, may deem reasonable.

The produce of the land shall be ascertained by a survey and measurement, one-half of the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the jama required of him, and the other moiety by Government; or by such other mode of investigation as the Collector, with the sanction of the Board of Revenue, may judge advisable.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held khas, under the rules prescribed in Regulation VIII, 1793.

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the lands at such fixed revenue for ever.

Third.—If the grant shall have been made subsequent to the Bengal year 1178, or the Fasli or Wilaiyati year 1179 (according as the lands may be situated in Bengal, Bihár or Orissa), the revenue or jama to be paid to Government from the land shall be assessed agreeably to the rules prescribed in Regulation VIII, 1793, for form-

If grant made after that time.

ing the settlement of estates paying revenue to Government, and the produce shall be ascertained, and the expense of the investigation defrayed in the manner specified with regard to the lands in the preceding clause.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khás*, under the rules for the decennial settlement

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the land at such fixed revenue for ever.

Assessment of revenue by Government upon invalid *lákhiráj* land after resumption, does not confer a new estate on the *lákhirájdár*, and does not cancel or extinguish a *mokurrari* lease granted by the *lákhirájdár* previous to the settlement, and during the time he was in possession of the land as *lákhiráj*.—8 B. L. R., 197.

It had previously been held (S. D. A., 1850, p. 167; 1860, pp. 661, 662) that the resumption of an estate held as *lákhiráj* operated in extinguishing all under-tenures. But in the case of *Parzhará Bibi v. Mussamut Azizonissa Bibi* (B. L. R., Supp. Vol., 175) a Full Bench declared the law on the subject as follows:—

“When a *lákhirájdár* has entered into a contract with a tenant, whether for a term, or in perpetuity, both parties are in strict law bound to the conditions of the contract. We, therefore, do not think that the mere resumption of the *lákhirájdár*'s tenure by Government,—that is, the mere fact that that tenure has been rendered liable for the payment of revenue,—can of itself, as a matter of law, dissolve the contract entered into between the parties.”

The settlement of revenue assessable in consequence of resumption does not and cannot confer a new estate on the *lákhirájdár*; it merely fixes and limits the demand as respects revenue originally chargeable on the estate of the *lákhirájdár*.

9. The rules in the preceding section are to be held

Rule for fixing revenue on land specified in section 6; with this difference, that the

proprietor, farmer, dependent taluqdar or officer of Government to whom the revenue may be payable, shall ascertain the produce of the land without subjecting the grantee to any expense, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount.

If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands

as a dependent taluq, subject to the payment of such fixed revenue for ever.

10. All grants for holding land exempt from the payment of revenue, whether exceeding Grants made since 1st December, 1790, or under one hundred bighás, that declared void. have been made since the 1st December, 1790, or that may be hereafter made, by any other authority than that of the Governor General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it.

And every person who now possesses, or may succeed to, the proprietary right in any estate or dependent taluq, or who now holds or may hereafter hold any estate or dependent taluq in farm of Government, or of the proprietor, or any other person, and every officer of Government appointed to make the collections from any estate or taluq held khás, is authorized and required to collect the rents from such lands at the rates of the pargana, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or taluq in which it may be situated, without making previous application to a Court of judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government;

nor shall any such proprietor, farmer or dependent taluqdár be liable to an increase of assessment on account of such grants which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or taluq when the grant may be so resumed and annulled.

The managers of the estates of disqualified proprietors, and of joint undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section.*

It is a good defence to a suit to resume a lákhiráj grant that the land has been held as lákhiráj for sixty years.—10 C. L. R., 11.

In a suit by the zamíndárs for enhancement of rent, if the tenant alleges that portion of the lands held by him is rent-free, the burden of

proving a *primâ facie* case as to this is on the tenant.—8 C. L. R., 6, following 8 W. R., 183; 5 W. R. (Act X), 48.

If the tenant alleges that he holds *no mâl* lands, apparently the zamíndár would have to make out a *primâ facie* case. But where some of the lands are admittedly rent-paying, the onus to start with is on the tenant.—7 C. L. R., 497.

It has been held that, under s. 3, Reg. II of 1805 (repealed), possession of land for a period upwards of sixty years since the passing of Reg. XIX of 1793, without payment of rent, bars the remedy of the zamíndár to dispossess the holder, or to resume the land as *mâl*.—3 B. L. R., 446, A. C.

It has been held in Bombay, that a *sanad* is not indispensable to the proof of *mirasi* tenure. A *mirasi* right or perpetuity of tenure may be proved by other means, and long possession is a strong element in such proof.—1. L. R., 3 Bom., 349.

11. Proprietors or farmers of land or dependent taluq-dars, who may be

How proprietors and farmers to recover revenue on lands specified in section 6. entitled to the revenue of any land of the description of that specified in section 6 situated in their respective

estates, farms or taluqs, are to institute a suit for the recovery of it in the Court of Díwání Adálat.

Any proprietor or farmer of land, or dependent taluqdár, or other person, subjecting such lands to the payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured.

Where estates or dependent taluqs may be held khás, the right of suing for the recovery of the revenue from the lands specified in section 6 is to be considered as vested in the party to whom the collections from the estate or taluq may be payable.

If the estate or taluq be held khás by Government, the tahsildár or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector.

It was held by Peacock, C. J., that the word "revenue," as used in this section, refers to the dependent taluqdárs mentioned in s. 6, Reg. VIII of 1793, who as heretofore were to pay their revenue through the zamíndárs.—9 W. R., 1.

12, 13, 14.—[Repealed by Regulation II of 1819.]

15. The Collectors of the revenue are to defend all suits that may be instituted against

Suits by or against Government. Government, by any individual claiming a right to hold lands exempt from the payment of public revenue, and such suits, and the

suits which the Board of Revenue may direct the Collector to institute, are to be defended and prosecuted by the vakíl of Government under the instructions of the Collector ;

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793,* and the other sections in that Regulation respecting decisions given against a Collector in any Zila Court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal against the decision of the Zila Court to be preferred to the Provincial Court of Appeal or against the decision of the Provincial Court to the Sadr Díwání Adálat, in the event of their ordering the cause to be appealed to the Provincial Court, and of its being given against them therein, they are to report their reasons, in both cases, for not preferring the appeal to the Governor General in Council, who will direct the cause to be appealed, or not, in either case as may appear to him proper.

16.—[*Repealed by Regulation II of 1819.*]

17. If it shall appear to any Court of judicature during

Grants forged or altered in any respect or antedated, declared void.

the course of a trial, that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December, 1790, has been forged,

or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land shall be subjected to the payment of revenue accordingly.

18.—[*Repealed by Act No. XVI of 1874.*]

19.—[*Repealed by Regulation II of 1819.*]

20. Grants of land, which from the terms of the grant

Transfer of grants.

or the nature of the tenure are hereditary, and are declared valid by this

Regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale, or otherwise;

and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government, or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

21, 22.—[*Repealed by Bengal Act No. VII of 1876.*]

23.—[*Repealed by Act No. VIII of 1868.*]

24. All persons actually holding lands exempt from the

Time for registry of grants.

payment of public revenue, whether exceeding or under one hundred bighás, in virtue of grants made pre-

vious to the 1st December, 1790, and whether made or confirmed by the Government of the country for the time being, or any other authority, shall be allowed one year from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the Collector of the Revenue of the zila in which the lands may be situated.

25. To prevent any pleas being hereafter urged of ignorance of the rule contained in the

Publication to be made requiring all persons to register grants.

preceding section, the Collector of each zila, upon the receipt of this Regulation, is to cause the following

publication, which shall be written in the Bengal and Persian languages in Bengal and Orissa, and in the Persian language and the Hindústání language and Nágarí character in Bihár, and attested with their official seals and

signatures, to be fixed up in the principal kachahrí of every proprietor and farmer of land in the zila paying revenue immediately to Government; and of every Native Collector in lands held khás by Government;

and where the estate of any proprietor with whom a settlement may have been concluded, or the farm of any farmer, or lands held khás, shall consist of two or more whole parganas or portions of parganas, he shall cause the publication to be fixed up in the principal kachahrí in each pargana or portion of a pargana, comprised in such estate, farm or khás lands, and take a receipt, specifying the date on which the publication may be fixed up, from such proprietor, farmer or Native officer, who shall respectively be held responsible for the paper remaining so affixed for one year from the date of it.

“In conformity to Regulation XIX, 1793, every person being actually in possession of brahmottar, bishnuprít or other land now exempt from the payment of revenue, in the estate of ———, or the farm of ———, or the khás lands under the charge of ———, whether exceeding or under one hundred bighás of the measurement of the pargana in which the land may be situated, and whether comprising or lying in one village, or two or more villages, and which may be held in virtue of any grant made previous to the 1st December, 1790, corresponding with the 18th Aghan, 1197, Bengal era, the 10th Aghan, 1198, Faslí, the 18th Aghan, 1198, Wiláiyatí, and whether made or confirmed by the Government of the country for the time being, or its officers, or any other authority, are required to register the following particulars respecting such lands in the office of the Collector of the zila before the expiration of one year from the date of this publication.

“If any holders of such grants, who shall not so register their grants, either in person or by vakíl, with a vakálat-náma attested by two credible witnesses, and given for the express purpose of registering the grant, the lands will be considered liable to the payment of revenue, in the same manner as if they had been adjudged to be so by a final decree of a Court of judicature.

“Persons having claims only to hold land exempt from the payment of revenue, but who do not now hold the

lands exempt from the payment of revenue, are not to register the land so claimed by them.

“ Denomination of the grant, whether bishuprít, brahmottar or other tenure.

“ Name of the grantor.

“ Name of the original grantee.

“ Name of the present possessor, and if he be not the original grantee, his relationship to him, and whether he succeeded to the land hereditarily, or by purchase, or what other mode.

“ Date of the deed, if the grant be in writing, and if not, the date on which the grant was made.

“ The name or names of the village or villages comprised in the grant, or in which the land may be situated.

“ The measurement of each village, or the villages or the land included in the grant.

“ The pargana or parganas in which the lands may be situated.

“ A copy of the original grant, or other writings, under which the land may be held.”

26. If any person in possession of any such grant of land now held exempt from the payment of revenue shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the land included in the grant shall, by such omission, become subject to the payment of revenue, in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of a Court of judicature, and the Collector, if the land shall exceed one hundred bíghás, shall proceed to assess the lands accordingly; and if it shall be under one hundred bíghás, the party to whom the revenue of the land may be payable under section 6 is empowered to assess the lands as therein directed.

The Governor General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor of the land showing good and sufficient cause, to his satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the Governor Gene-

ral in Council every case in which persons who may have omitted to register their grants as required may appear to them entitled to have their grants admitted upon the register.

27. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor General in Council, are declared invalid, as far as regards the exemption from the payment of revenue, and the land shall be assessed with revenue as directed in section 26.

Grants not registered within prescribed period, &c., invalid.

28. It is expressly declared, however, that the registry of grants under this Regulation is not to be considered as an admission of the right of the person in whose name they may be registered to the property in the soil, or of his title to hold the lands exempt from the payment of revenue.

Effect of registry of lands.

Any person will be at liberty to sue him in the Dīwānī Adālat for the former, and he will be liable to be sued for the recovery of the latter by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the lands are liable to the payment of revenue.

29 to 34.—[*Repealed by Bengal Act No. VII of 1876.*]

35. Upon the arrival of the period when the separation is to be carried into effect, the Collector of the zila from which the separation may be directed to be made is to transmit to the Judge of the Dīwānī Adalat of his zila, copies of the entries in the last periodical register and register of intermediate resumptions, which may relate to the grants to be separated from his zila ;

How separations and annexations of exempted lands are to be notified to the Courts.

and the Collector to whose zila the annexation may be made is to transmit copies of the above-mentioned entries (with which he is directed to be furnished in the preceding section) to the Judge of the zila in which it may be included.

Immediately upon the receipt of these papers, the Courts, from the jurisdiction of which the separations may be made, are to transmit the papers in the causes depending before them, which in consequence of the separation may become cognizable in any other zila Court, to such Court, and to cause notification thereof to be communicated to the parties in writing.

36 to 44.—[*Repealed by Bengal Act No. VII of 1876.*]

45, 46.—[*Repealed by Act No. XII of 1876.*]

47. All the rules in this Regulation respecting lands now held, or that may be claimed to be held, exempt from the payment of revenue, under life-grants made previous to the date of the Company's accession to the Dīwānī, are to be considered equally applicable to grants made previous to that date for a term only.

48. No part of this Regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late superintendents of the bāzī-zamīn daftar in Bengal, in virtue of the powers vested in them.

49. Nor to extend to jāgīr, altamghā, madadmāsh, aima or other grants of land termed bādshāhī or royal, and held, or stated to be held, under a royal firmān.

The rules applicable to such grants are contained in Regulation XXXVII, 1793.

REGULATION XXXVII OF 1793.

*A Regulation for re-enacting, with modifications, the rules passed on the 23rd April, 1788, and subsequent dates, for trying the validity of the titles of persons holding or claiming a right to hold Altamghā, Jāgīr and other lands exempt from the payment of public revenue, under grants termed bādshāhī or royal, and for determining when certain grants of that description shall be considered to have expired; and for fixing the amount of the public revenue to be assessed upon the lands, the grants for which may expire, or be adjudged invalid.**

1. BY the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bīghā of land, unless it transfers its right thereto for a term, or in perpetuity.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

As a necessary consequence of this law, every grant or alienation of Government's proportion of the produce of lands without its sanction was considered null and void.

Had the validity of such grants or alienations been admitted, it is obvious that the public revenue would have been liable to gradual diminution.

Under the Native Government, grants were occasionally made of the Government's share of the produce of lands, for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops, and for other services.

The British Government continued to the grantees or their heirs such of these grants as were hereditary and were made before the date of the Company's accession to the *Díwání*, provided the grantees or their heirs had obtained possession previous to that date; but those grants which were for life only have been invariably considered as resumable on the death of the grantees.

No complete register of these grants having been formed on the Company's accession to the *Díwání*, nor subsequent to that period, many persons have retained possession of lands under fabricated or antedated grants, or have succeeded to life-grants on the demise of the original grantee or former possessor, without the sanction of Government.

The Governor General in Council deeming it incumbent on him to resume the public dues from lands held under invalid tenures, as well as the revenue of all lands the grants for which might expire, and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated or were appropriated without authority, the amount of the revenue of the lands having in both cases been excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 36, Regulation VIII, 1793, that the *jama* assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority; and by the third clause of the seventh article of the

Proclamation contained in Regulation I, 1793, which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated, that the Governor General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles.

The Governor General in Council, however, at the same time that he is desirous of recovering the public dues from lands held under invalid tenures, is equally solicitous that persons holding lands under grants that are declared valid should be secured in the quiet possession and enjoyment of them.

With this view, and to obviate all injustice or extortion in the inquiry into the titles of persons possessing lands under such grants, he has resolved that all claims of the public for the resumption of such grants (provided the grantees or persons in possession register their grants as required in this Regulation) shall be tried in the Courts of judicature, that no such grants may be resumed until the title of the grantee or present possessor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the resumption of invalid grants, as well as to prevent any grants being hereafter made without the authority of Government, and further that Government and its officers may at all times have in their possession a correct register of the lands, in the several zilas, held exempt from the payment of revenue under bádsháhí grants, the following rules, containing the rules passed on the 23rd April, 1788, and subsequent dates, with modifications, have been enacted:

2. *First*.—Altamghá, jágír, aima, madadmásh or other bádsháhí grants for holding land made before Díwání. exempt from the payment of revenue, made previous to the 12th August, 1765, the date of the Company's accession to the Díwání, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to that date and the grant shall not have been subsequently resumed by the officers or the orders of Government.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted

previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a bádsháhí grant made previous to the date of the Company's accession to the Díwání, and on it being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to the Governor General in Council, to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and upon receiving the determination of the Governor General in Council, the Court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any Zila or City Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within the twelve years, and proceeded in it, as required by section 14, Regulation III, 1793.*

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee entitled to hold land free, paying revenue to Government, exempt from the payment of revenue, under a jágír or other grant made previous to the Company's accession to the Díwání,

* Repealed by Act No. VI of 1871.

where the grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

Fourth.—Nor to entitle the heirs of any person now holding lands exempt from the pay-

Nor also heirs of persons now possessing exempted lands under life-grants made previous to *Díwání*.

ment of public revenue under a *jágír* or other *bádsháhí* life-grant, made previous to the *Díwání*, to succeed to, and hold such land exempt from

the payment of revenue upon the demise of the present possessor; where the grant may expressly specify it to have been given for the life of the grantee only, or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where from the nature and denomination of the grant it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Fifth.—The present possessors of lands now exempt

Present possessors not to transfer or mortgage grants.

from the payment of revenue under such *jágír* or other life-grants made previous to the *Díwání*, and declared

by the preceding clause not to be hereditary, are prohibited from selling, or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives, and all such transfers and mortgages which have been or may be made, are declared illegal and void.

3. *First.*—All *bádsháhí* grants for holding land exempt

Certain grants made or confirmed since *Díwání* declared invalid.

from the payment of revenue, which may have been made since the 12th August, 1765, by any other authority than that of Government, and which

may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Second.—If doubts shall be entertained by any Court as

Procedure in cases of doubt of authority of officer confirming grant.

to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the

case to the Governor General in Council, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the Governor General in Council, shall decide accordingly.

4. It is to be understood that this Regulation respects only the Government proportion of the revenue arising from lands held or claimed to be held under bádsháhí grants, and whether Government is entitled to resume or retain such revenue or otherwise.

Every dispute or claim regarding the zamíndarí or proprietary rights in lands included in any grant, is to be considered as a matter of a private nature between the contending parties, and is to be determined in the Díwání Adálat.

5. When a jágír or other life-grant shall escheat to Government, the Collector is immediately to attach the revenue of the escheated grants, lands, and report the circumstance to the Board of Revenue, who are to obtain the orders of the Governor General in Council regarding the resumption of the grant.

6. When any bádsháhí grant shall be resumed or expire, or escheat to Government, the revenue included in resumed grants, to be paid to Government from the lands included in it shall be assessed, and the settlement made in perpetuity, agreeably to the rules for the decennial settlement contained in Regulation VIII, 1793, with the person possessing the zamíndarí or proprietary right in the lands, whoever he may be.

If the proprietor shall refuse to pay the jama demanded of him, the land shall be held khás or let in farm, as directed in that Regulation.

On the failure of heirs, a tenure does not revert to the grantor, but escheats to the Crown.—1 B. L. R., P. C., 44.

The doctrine of escheat to the Crown was considered by the Privy Council in the case of the *Collector of Masulipatam v. Cavalry Vencata Narainapa*, 8 Moore's I. A., 500. In that case the property in question was a zamíndarí, and it was urged that, as the zamíndár was a Brahman, the estate was not subject to the law of escheat. Lord Justice Knight Bruce delivered the judgment of the Committee: "The Crown has a general right to take by escheat the land of a Hindu subject, though a Brahman, dying without heirs; and they think that the claim of the

appellant to the zamíndarí in question (subject or not subject to a trust) ought to prevail unless it has been absolutely, or to the extent of a valid and subsisting charge, defeated by the acts of the widow in her lifetime. In the latter case the Government will, of course, be entitled to the property, subject to the charge." In a subsequent case relating to the same estate (11 Moore's L. A., 619) the question was between the Government and a person claiming to have a valid and subsisting charge by an act of the widow—a charge which the widow was competent to create; and it was held that the Government took subject to the charge, and the suit was dismissed, but without prejudice to the right of the Collector, as representing the Crown, to redeem the charge and recover the estate.

Absolute hereditary mokurrari tenures escheat in the same way as a zamíndarí to the Crown, and do not revert to the zamíndár.—I. L. R., 1 Calc. 391.

7, 8, 9.—[*Repealed by Regulation II of 1819.*]

10. Any person having a claim to hold lands paying revenue exempt from the payment of revenue under a bádsháhi grant, must

Suits against Government by persons claiming to hold lands paying revenue exempt from revenue under bádsháhi grants.

institute his claim against Government, who alone can be the defendant in such suits, in the Díwání Adálat of the zila, in the same manner as in cases

where individuals may claim a right to hold lands paying revenue exempt from the payment of revenue under grants not of the description of those termed bádsháhi, in virtue of Regulation XIX, 1793.

The Collectors of the Revenue are to defend all such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the Collector to institute, are to be defended or prosecuted by the vakíl of Government, under the instructions of the Collector;

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793,* and the other sections in that Regulation respecting decisions given against a Collector in any Zila Court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement

* Repealed by Act No. XVI of 1874.

of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal from the decision of the Zila Court to be preferred to the Sadr Dīwānī Adálat, they are to report their reasons for not preferring the appeal to the Governor General in Council, who will direct the cause to be appealed or not, in either case, as may appear to him proper.

11.—[*Repealed by Regulation II of 1819.*]

12. If it shall appear to any Court of judicature, during the course of a trial, that a grant has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void.

13.—[*Repealed by Act No. XVI of 1874.*]

14.—[*Repealed by Regulation II of 1819.*]

15. Altamghá, aima and madadmásh grants are to be considered as hereditary tenures.

Transfer of grants.

These and other grants, which from the terms or nature of them may be hereditary and are declared valid by this Regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise, and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector, within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government, or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

ágírs are to be considered as life-tenures only, and with

all other life-tenures are to expire with the life of the grantee, unless otherwise expressed in the grant.

The rule of construction that a grant made to a man for an indefinite term enures only for the life of the grantee, and passes no interest to his heirs, does not apply in cases where the term can be definitely ascertained by reference to the interest which the grantor himself has in the property, and which the grant purports to convey.—I. L. R., 3 Cal, 210.

The Privy Council remarked as follows in a case regarding ghatwali tenures:—"It is contended that the *sanads* (the Ghatwali grants) in effect merely gave certain lands as wages to hired servants, and that the ticcadar, whenever he chose, provided the Government dispensed with the Ghatwali services, might put an end to the tenure, and take back the lands which were allotted in lieu of wages. It appears to their Lordships that this contention is not a correct one: that these *sanads* were grants of the lands subject to certain services, *viz.*, the payment of the small rent of Rs. 245-12, and also of performing the Ghatwali duties. They were *not, therefore, the hiring of a servant giving him certain land in lieu of wages, but grants of land upon condition of certain services.*"

A Ghatwal, in the district of Beerbhoom, is not competent to grant a lease of the whole or a portion of his Ghatwali tenure in perpetuity. Ghatwali tenures in Beerbhoom are grants of land by the Government to individuals for the performance of certain police duties. These tenures are heritable, but the incomes arising from them cannot be charged or encumbered by the Ghatwal in possession so as to bind his successor.—6 B. L. R., 652.

In 1775 a rent-free *sanad* was granted to M for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men, and take care of the ryots. In 1807 a fresh *sanad* was granted to M's heirs; both *sanads* were to cultivate, keep up a body of men, keep off elephants, and attend to the safety of the ryots. *Held*, that this was not a service tenure that could be resumed.

The zamindári in which these lands were situated was settled in 1802, and was in 1850 sold for arrears of Government revenue. The appellant, auction-purchaser, claimed to set aside the *sanad* of 1807, on the ground that Government had no right to give such a *sanad*, but he contended that, if it had, it could be set aside by a purchaser at a Government sale. *Held*, that the *sanad* was not a new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation.—5 B. L. R., 529.

This case is a leading case regarding service tenures, and should be carefully studied by Settlement Officers. It was urged for the appellant that the grants were for services to be performed, and therefore the lands could be resumed when the service could no longer be performed; that they were *chakeran* lands within the meaning of Reg. VIII of 1793, sec. 41; that if the service was not performed they were resumable (*Bhugro Rai v. Azim Ali Khan*, S. D. A., 1858, 84); that the continuation of the service was the test of the validity of grant so as to oust the right of resumption—(Marsh, H. C. Rep., 518, and 1 B. L. R., 120, A. C.) The case of *Joykissen Mookerjee v. Collector of Burdwan* (10 Moore's I. A., 16) was also referred to. In that case it was decided that lands held in lieu of remuneration by a village chowkidar, though unquestionably *chakeran* within the meaning of Reg. VIII of 1793, s. 41, were not resumable at the pleasure of the zamindár, if the public, or the Govern-

ment representing the public, had an interest in the appointment of the chowkidar. In the case of *Harinarain Ghose v. Urnoo Dasi* (S. D. A., 1857, p. 786), the *chakeran* lands had been assigned for the maintenance of a chowkidar, and the existing chowkidar had no connection with them, being otherwise remunerated. Other provision had, therefore, been made for the service to be rendered in return for the *chakeran* lands. In the case of *Maharajah Srishchunder Rai v. Madhub Mochee*, the tenant whose services had been dispensed with, or had otherwise ceased, was clearly the mere private servant of the Maharaja. He was the person bound to perform all the leather work required in the family.

After reviewing these and other cases their Lordships laid down the law as follows:—The right to resume must depend in a great measure on the nature of the tenure or the terms of the grant. There is a clear distinction between

(1) the grant of an estate burdened with a certain service; and

(2) the grant of an office, the performance of whose duties are remunerated by the use of certain lands.

They held that the grant in question did not fall within the latter category; that, assuming it to be a grant of the former kind, it might have been so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that the service ceasing, the tenure should determine.

But their Lordships were of opinion that the *sanads* were not grants of this kind. They laid stress on the fact that *each sanad proceeded on the past services of the grantee*. They summed up as follows:—“Nor is the consideration, so far as it is unexecuted, wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees are also to cultivate the waste land. The latter stipulation was probably designed to protect the already cultivated districts of Sultanpur, by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *pro servitiis impensis et impenden dis*—*partly as a reward for past, partly as an inducement for future services*. Again, neither *sanad* contains any words which expressly import that the tenure shall cease if, and when any of, the services cease to be performed. Such a provision is very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as *e. g.*, the progress of cultivation which has caused the wild elephants to cease out of the land) removes the necessity for the services, *the grantee will hold the lands practically free from the condition originally imposed upon him*. Their Lordships are, therefore, of opinion that, upon the true construction of these *sanads*, the grantees, though bound to protect the pergunnah from the incursions of wild elephants so long as those incursions lasted, and though still bound to do so, should, by any chance, those incursions be renewed, and though they may be liable to forfeit the tenure if they wilfully fail in the performance of this duty, are not liable to have their lands resumed, because there is no longer any occasion for the performance of this particular service, there being now no fear of the depredations of elephants in those places.”

Where a *jágir* is held by a person subject either to the appointment or approval of Government, and with an additional burden of public

duty to the Government, such a *jágír* cannot be attached and sold in satisfaction of the debts of the *jágírdár's* predecessor in title, as land coming into his possession from the hands of the deceased *jágírdár*, as the appointment and approval of the Government deprive the *jágír* of the character of simple heritable property.—I. L. R., 5 Cal., 389.

It has been held that a suit will not lie against a *jágírdár* holding a service-tenure to recover rent owing by his predecessor.—10 W. R., 255.

A ghatwali tenure is only hereditary in a certain way,—that is to say, it is customary to appoint the son of the last holder, if he is competent.

The dismissal of a Ghatwal carries with it the forfeiture of his tenure.—I. L. R., 5 Cal., 740.

No Ghatwal succeeds simply by right of inheritance. The new Ghatwal is invariably appointed by the Magistrate. As a general rule, the late incumbent's heir, if fit, is appointed. The tenure is conditional on the performance of the service. The service is not merely an appendage to the tenure.

It was ruled by the Privy Council, in a case from Bombay, that a *jágír* must be taken, *primâ facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary.—I. L. R., 3 Bom., 186.

It was held in a late case by the Privy Council that a Ghatwal *jágír* in the zamíndarí of Pachet (Manbhoom) was analogous to the ghatwali tenures described in Reg. XXIX of 1814, relating to Beerbhoom.

It was held that the nature of the tenure had not been altered by the Permanent Settlement, after which the services due by the *jágírdár* remained as before public services, and continued to be due to the Government. That the zamíndár became entitled only to the rent, or revenue, which was previously due to the Government, and in respect of which he was assessed, and did not become entitled to the services in respect whereof the one-third of the rent or revenue was allowed as compensation to the *jágírdár*. That the *jágír*, though hereditary, was not subject to the ordinary rules of inheritance according to the Hindu or the Mahomedan law, but was held upon the condition of approval of the heir by the Government. Thus were precluded both division of the *jágír* mehal upon the death of the holder, and alienation during his life. It followed that the *jágír* was not liable to attachment and sale in execution of a decree against the father and predecessor in estate of a *jágírdár* so approved, as assets by descent in the possession of the latter. *Raja Nelanund Singh v. Government of Bengal*, 6 Moore's I. A., 101, followed.—I. L. R., 9 Cal., 187.

In the case of *Raja Nilmoney Singh v. The Government of Bengal* (6 W. R., 121), it was found by the lower Courts that the lands were held upon a Ghatwali tenure, and the High Court, on special appeal, held that they were not resumable by the zamíndár, on the ground that the tenure had been forfeited on account of the tenants' refusal to perform the services. The Chief Justice remarked:—“If the Government received only two-thirds of the annual value of the lands as rent or revenue, and allowed the tenant to retain one-third on account of services, the services must have been public and not private. The Government would not have foregone any portion of their revenue in consideration of private services to be rendered to the zamíndár. This case was affirmed by the Privy Council (18 W. R., P. C., 321).

Lands held under ghatwali tenure are not resumable under Reg. I, 1793 s. 8, cl. 4, as lands included in the allowances to zamíndárs for thana or police establishment.

Ghatwali tenures are not divisible; they descend to the eldest son, (6 Sel. Rep., 204, Ed. of 1873.) or the nearest member of the family most capable of performing the duty.—W. R., Sp. No., p. 39. The tenure is not transferable or alienable in execution of a decree, and it is not one of the tenures referred to in Reg. XXXVII of 1793, s. 15.—See W. R., Sp. No., p. 249; 7 W. R., 178; 10 W. R., 255.

16, 17, 18.—[*Repealed by Bengal Act No. VII of 1876.*]

19. All persons actually holding lands exempt from the payment of public revenue under *bádsháhí* grants, and whether made or confirmed by the Government of the country for the time being, or by whatever authority, shall be allowed one year, from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the Collector of the Revenue of the zila in which the lands may be situated.

20. To prevent any pleas being hereafter urged of ignorance of the rule contained in the preceding section, the Collector of each zila in which any *jágír*, *altamghá*, *aima* or *madadmásh*, or other lands held under sanads or grants termed *bádsháhí*, may be situated, upon the receipt of this Regulation, is to cause the following publication, which shall be written in the Bengal and Persian languages, in Bengal and Oris-a, and in the Persian language, and the Hindústání language and Nágarí character, in Bihár, and attested with their official seals and signatures, to be fixed up in the principal *kacharí* of the holders of grants of the description of those specified in this Regulation, and take a receipt from the holder of such grant or the person entrusted with the management of it, specifying the date on which the publication may be fixed up, and that he will be responsible for the paper remaining so affixed for one year from the date of it.

“In conformity to Regulation XXXVII, 1793, every person being actually in possession of *altamghá*, *jágír*, *aima*, *madadmásh* or other land now exempt from the payment of revenue and held under *bádsháhí* grants, in the zila of——, whether made or confirmed by the Government of the country for the time being, or by whatever authority, are required to register the following particulars respecting such grants in

Publication.

the office of the Collector of the zila, before the expiration of one year from the date of this publication.

“If any holders of such grants who shall not register their grants, either in person or by a vakíl, with a vakálat-náma attested by two credible witnesses, and given for the express purpose of registering the grants, the grants will be considered liable to resumption, and the lands chargeable with the revenue, in the same manner as other lands subject to the payment of revenue.

“Persons having claims only to hold land exempt from the payment of revenue under such grants, but who do not now hold the lands exempted, are not to register the lands so claimed by them.

“Denomination of the grant, whether altamghá, jágír or other tenure.

“By whom granted.

“Name of the original grantee.

“Name of the present possessor, and if he be not the original grantee, his relationship to him, and whether he succeeded to the land hereditarily or by purchase, or what other mode

“Date of the grant.

“The name or names of the maháls or villages, or lands, comprised in the grant, or in which the land may be situated.

“The names of the zamíndár or other proprietor of the maháls or villages, or lands, included in the grant, whether such zamíndarí or proprietary right shall be vested in the grantee or any other person.

“The measurement of each mahal or village, or the land included in the grant.

“The pargana or parganas in which the lands may be situated.

“A copy of the original grant and other writings under which the land may be held.”

21. If any person in possession of any such grant that Grants not registered within prescribed time liable to resumption. may be now in force shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the grant shall, by such omission, become subject to resumption, and the lands shall become liable to the payment of revenue to Government.

The Governor General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor showing good and sufficient cause, to his satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the Governor General in Council every case in which persons who may have omitted to register their grants as required may appear to them entitled to have their grants admitted upon the register.

22. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor General in Council, are declared forfeited, and the lands shall be assessed with revenue, agreeably to the rules prescribed for the decennial settlement.

23. It is expressly declared, however, that the registry of a grant under this Regulation is not to be considered as an admission of the right of the person in whose name it may be registered to the property in the soil, nor of the validity of his grant.

Any person will be at liberty to sue in the *Díwání Adálat* for the former, and he will be liable to be sued for the resumption of the grant by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the grant is invalid.

24.—[*Repealed by Bengal Act No. VII of 1876.*]

25.—[*Repealed by Act No. XVI of 1874.*]

26 to 29.—[*Repealed by Bengal Act No. VII of 1876.*]

30. Upon the arrival of the period when the separation is to be carried into effect, the Collector of the zila from which the separation may be directed to be made is to transmit to the Judge of the *Díwání Adálat* of his zila, copies of the entries in the last periodical register and register of intermediate occurrences, which may relate to the grants to be separated from his zila; and the Collector to whose zila the annexation may be made is to transmit copies of the above-mentioned entries (with which he is directed to be furnished in the preceding

section) to the Judge of the zila in which the lands may be included.

Immediately on the receipt of these papers, the Courts from the jurisdiction of which the separation may be made are to transmit the papers in the causes depending before them, which in consequence of the separation may become cognizable in any other Zila Court, to such Court, and to cause notification thereof to be communicated to the parties in writing.

31, 32, 33.—[*Repealed by Bengal Act No. VII of 1876.*]

34.—[*Repealed by Act No. XVI of 1874.*]

35 to 41.—[*Repealed by Bengal Act No. VII of 1876.*]

42. No part of this Regulation is to be considered to

Regulation not to extend to lands held, or stated to be extend to grants not held, exempt from the payment of bádsháhí.

public revenue under grants not being of the description of those termed bádsháhí or royal.

The rules applicable to such grants are contained in Regulation XIX., 1793.

REGULATION II OF 1819.

*A Regulation for modifying the provisions contained in the existing Regulations, regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made.**

1. THE rules contained in Regulations XIX and XXXVII, 1793, relative to the resump-

Preamble.

tion of the revenue of lands held free of assessment under illegal or invalid tenures, and the corresponding provisions enacted in subsequent years having been found inadequate to secure the just rights of Government, have from time to time been partially repealed or modified.

Those rules, however, are still in force within several of the districts subordinate to this Presidency, and the Regu-

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of

lations by which they have in other districts been superseded appear to be in several respects defective.

It further appears to be necessary, in order to obviate all misapprehension on the part of the public officers, or of individuals, to declare generally the right of Government to assess all lands which, at the period of the decennial settlement, were not included within the limit of an estate for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the above period, nor lands held free of assessment under a valid and legal title; and at the same time formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a permanent settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, mahals expressly excluded from the operation of the settlement.

With the view, therefore, of establishing, on proper principles, one uniform course of proceeding in resuming the revenue of lands liable to assessment, so that the dues of Government may be secured without infringement of the just rights of individuals, the following rules have been enacted, to be in force from the date of their promulgation throughout the Provinces immediately subordinate to the Presidency of Fort William.

2. [*Repealed by Act No. XVI of 1874.*]

3. *First.*—It is hereby declared and enacted, that all lands

Lands not included in decennial settlement, &c., liable to assessment, except lands held free of assessment under valid title.

which, at the period of the decennial settlement, were not included within the limits of any pargana, mauza or other division of estates for which a settlement was concluded with the

owners, not being lands for which a distinct settlement may have been made since the period above referred to, nor lands held free of assessment under a valid and legal title of the nature specified in Regulations XIX and XXXVII, 1793, and in the corresponding Regulations subsequently enacted, are and shall be considered liable to assessment in the same manner as other unsettled mahals, and the revenue assessed on all such lands, whether exceeding one hundred bighás or otherwise, shall belong to Government;

provided, however, that nothing in the above rule shall
 be construed to affect the rights
 Proviso. reserved to zamíndárs, taluqdárs and

other proprietors of estates, with whom a permanent settlement has been concluded, to the exclusive enjoyment of the rent assessed on lands held on an invalid tenure, free of assessment, within the limits of their respective estates and taluqs, and of which the extent may not exceed one hundred bighás if in Bengal, Bihár or Orissa, and fifty bighás if within the Province of Benares.

Second.—The foregoing principles shall be deemed appli-

Same principle appli- cable not only to tracts of land, such
 cable to chars and allu- as are described to have been brought
 vion lands. into cultivation in the Sundarbuns,

but to all chars and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period, whether from an introcession of the sea, an alteration in the course of rivers, or the gradual accession of soil on their banks.

Third.—The same principle shall likewise be deemed

Also to lands included applicable to all lands which, though
 within particular included at the period of the perma-
 taluqs. nent settlement within the limits of

taluqs held by individuals under special pattás from the Collector, such as the patitábádí and jangalburí taluqs in the districts of the Twenty-four Parganas and Jessore, may not have been permanently assessed at the above-mentioned period ;

provided, however, that, in respect to such lands, if in the

Proviso.

possession of the original patta-holder, or his legal representative, the conditions of the patta in regard to the assessment of the land included within the limits specified in that instrument shall be strictly maintained.

4. The several rules prescribed in Regulations XIX

Application of exist-
 ing rules to grants for
 holding lands under
 mukarrari or other
 tenures.

and XXXVII of 1793 ; and Regula-
 tions XLI and XLII of 1795 ; Regu-
 lations XXXI and XXXVI of 1803 ;
 Regulations VIII and XII of 1805,*
 for determining the validity of grants

for holding lands exempt from the payment of public revenue, are hereby declared applicable to grants for holding lands under mukarrari or other tenures limiting the demand of Government ;

provided, however, that nothing in this section shall be

Proviso.

construed to affect the rules contained in Regulation VIII, 1793, relative to the assessment of lands held under valid grants or leases of the above nature, nor to alter the provisions contained in Regulation I, 1815, by which tenures of that description are declared liable to assessment on the death of the grantee.

5. *First.*—Whenever a Collector of revenue or other

Power to direct investigation regarding liability of lands to be assessed.

officer exercising the powers of Collector shall have reason to believe that any lands lying within the sphere of his official control are liable to assessment, either as being held under an invalid tenure free of assessment, or at an inadequate jama, or as being liable to assessment on the principles stated in section 3 of this Regulation, he shall report the circumstances to the Board of Revenue or other Authority exercising the powers of that Board, who, should they be of opinion that proper grounds exist for inquiry, shall direct the Collector or other officer aforesaid to enter on an investigation of the case in the manner hereafter mentioned.

Second.—The Collector, on receiving the authority of

Notice to party.

the Board of Revenue, shall call the party before him by a notice stating the demand of Government on the lands, and requiring him to attend either in person or by vakil, within the period of one month, and to produce all sanads or other writings in virtue of which he may possess the lands, or under which they may have been, or may be, claimed to be held free of assessment, or at a fixed jama.

Third.—If the persons whose lands it is proposed to

Or to his agent, if accredited agent reside at sadr station.

assess have an accredited agent at the sadr station, with general powers to act for his principal, the notice to be issued under the preceding clause shall be tendered to such agent, to be communicated by him to his principal, and the agent's acknowledgment to be endorsed upon it shall be

accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by a chaprásí or peon of the Collector.

Fourth.—If the person, the revenue of whose lands it is proposed to resume, shall not have an accredited agent at the sadr station of the description above mentioned, or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the Collectorship, it shall be served on him through the nazir of the Collector by a single chaprásí or peon, who shall require the acknowledgment of the party to be endorsed upon it, or, if he be absent from his usual places of residence, the acknowledgment of his principal agent, or of any person acting for him during his absence.

If the party be resident within the jurisdiction of any other Collectorship than that in which the lands proposed to be assessed are situated, the notice shall be transmitted to the Collector of the district in which the party may reside, to be served in the manner above directed.

If the party be neither resident within the Collectorship in which the lands in question may be situated, nor in any other Collectorship, the notice shall be served upon his agent or representative in charge of the lands.

Fifth.—Provided always, that if any party or his agent in charge of his land, on whom a notice may be served in the manner above prescribed, shall refuse to acknowledge the receipt of it when required by the person serving it, the tender of the notice to such party or his agent shall be taken for a sufficient service; such tender to be proved by the evidence of two persons residing on the lands or in the nearest village.

Sixth.—The Collector shall, in the notice summoning the party, warn him, that if he withhold any writings of the nature specified in the second clause of this section, within the period prescribed, they will not afterwards be received, unless he shall show good and sufficient cause for not producing them, and shall assign such cause on his appearing before him.

6. *First*.—If the holder of such lands to whom a notice

If notice cannot be served, proclamation to be issued. may have been issued as directed in the preceding section shall abscond, or is not, after diligent search, to be found, or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him, the Collector or other officer exercising the power of Collector, on receiving the názir's return to this effect, shall issue a proclamation, to be affixed in some conspicuous part of his kachahrí.

The proclamation shall be written in the Persian and Bengal languages in the Provinces of Bengal and Orissa (including Katak); and in the Hindústání language and Nágari character in Bihár, Benares and in the Ceded and Conquered Provinces; and it shall contain a copy of the former notice, and a further notification to the party, that if he shall not appear on a day to be fixed (which shall not be less than fifteen days from the time that the proclamation may be fixed up), the Collector will proceed, without further notice, to hold the inquiry *ex parte*.

The Collector or other officer exercising the power of Collector shall likewise order a copy of the proclamation and notice to be fixed up, with all practicable dispatch, on the outer door of the house in which the holder of the lands may have usually dwelt, or in some conspicuous place in the chief village within, or in the neighbourhood of, the lands proposed to be assessed.*

Second.—The názir shall return the order with an endorsement stating at what times and places the proclamation may have been fixed up.

The return of the názir shall be filed with the Collector's proceedings in the case.

If the party shall not appear at the time limited in the proclamation, or if a party who may have been served with a notice shall not appear within the time therein limited, or if, having appeared, he shall refuse to give answer, the Collector shall proceed to

If party does not appear, refuses to answer, case to be investigated.

* Modified by Regulation IX of 1825, section 5.

investigate and decide upon the case in the same manner as if the party had appeared, answered and entered into proof.

7. In cases of land supposed to be liable to assessment under the provisions of section 3 of this Regulation, the Collector or other officer exercising the powers of Collector, shall institute a full and particular inquiry into the circumstances and condition of the land in question at the period of the decennial settlement; and, in cases of alluvion land, into the period of its formation.

8. When an inquiry in regard to land of the nature of that described in the foregoing section shall have been authorized, it shall be competent to the Collector, with the sanction of the Board of Revenue or other Authority exercising the powers of that Board, previously obtained, to cause a survey or measurement to be made of all such lands, and of the estate to which such lands may be alleged to belong.*

9. It shall likewise be competent to the Collector, in all cases of inquiry held under the provisions of this Regulation, to summon the patwári, gumáshta or other person by whom the accounts relating to the lands proposed to be assessed, or to the estate to which the lands may be alleged to belong, are kept, and to require him to produce all accounts relating to such lands or estate, and to examine him on oath to the truth of such accounts, and on any other matter relating to such accounts, or regarding such lands or estate, in the manner specified in section 22, Regulation XII of 1817.

10. It shall be further competent to the Collector in such cases, with the sanction of the Board of Revenue or other Authority exercising the powers of that Board, to require the person claiming to be proprietor or farmer of the lands proposed to be assessed, or of the estates to which they are alleged to belong, to attend either in person or by representative, and to produce all the accounts relating to such lands or estate, within a reasonable period, not being less than one week.

* Modified by Regulation IX of 1825, section 5.

11. Whenever the Collector or person exercising the powers of Collector shall require the attendance of any proprietor or farmer, or of any patwári or gumáshta or other officer, for the purpose stated in the above section, he is to serve such proprietor or other person as aforesaid with a written notice under his official seal and signature, stating the purpose for which his attendance is required, the papers (if any) which he is to bring with him, and the period within which he is to attend.

Second.—[*Repealed by Act No. XII of 1876.*]

12. If any patwári, gumáshta or other person by whom the accounts of lands are kept, and who may be summoned by a Collector or Commissioner, under the provisions contained in sections 9 and 11 of this Regulation, shall neglect or omit to produce his original accounts on the requisition of the Collector or Commissioner, or to give his evidence regarding them, or shall intentionally and deliberately give a false deposition on oath before the Collector or Commissioner, when summoned and examined as aforesaid, or shall alter, fabricate, falsify or mutilate the accounts relating to such lands or to the estate to which such lands are stated to belong, shall be and be held liable to the pains and penalties specified in sections 23, 26 and 27 of Regulation XII, 1817, according as the provisions of one or other of those sections may be applicable to the offence committed by him.

13. *First.*—If the holder of any lands in regard to which the Collector shall have been authorized by the Board of Revenue or other Authority exercising the powers of that Board to institute the inquiry described by section 7 of this Regulation, shall refuse or neglect to furnish the accounts relating to such lands within the period specified in the Collector's requisition, the Board of Revenue or other Authority exercising the powers of that Board shall be competent to direct the lands to be immediately attached, and the rents collected on account of Government, in the same manner as if the lands were the property of Government.

In such cases, however, it shall still be the duty of the Collector to make a full inquiry into the title of the holder of the lands and to transmit his proceedings to the Board, which will decide whether the lands shall be deemed permanently liable to assessment.

Second.—Provided further, that if the holder of any land assessed under the rules of the Regulations shall institute a suit in Court to contest the decision of the Revenue authorities, and shall produce accounts or documents besides such as he may have delivered to the Collector, the accounts or documents so produced shall not be received by the Court in evidence, nor shall they have any weight in the decision any more than if they had never existed, unless he shall show good cause, to the satisfaction of the Court, for not having produced them.

Exception.—If the holder of any land shall prove that he assigned such cause in answer to the Collector's requisition, or show good cause for not having done so.

Third.—Provided also, that if any proprietor or farmer shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector or Commissioner, by the time prescribed in the notice issued by the Collector or Commissioner, or shall omit or refuse to furnish the accounts or documents required, and to show sufficient cause for such omission, the Board of Revenue or other Authority exercising the powers of that Board, are authorized and empowered to impose upon him such daily fine, to be payable daily, until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life, reporting, however, the amount for the information of the Governor General in Council.

The fine, when confirmed by Government, is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

14. If any zamíndár or other person shall resist, or cause to be resisted, the attachment or measurement of lands which the

Accounts not furnished to Revenue-authorities, not afterwards to be received in evidence in suits to contest their decision.

Fines for non-attendance of proprietor or agent, or for omission to furnish accounts.

Penalties for resistance of process.

Board of Revenue or other Authority exercising the powers of that Board shall have authorized the Collector or Commissioner to attach or measure under the provisions of this Regulation, or shall resist, or cause to be resisted, any process duly issued by the Collector or Commissioner, to compel a patwári, gumáshta or other officer to produce his accounts, and to give his evidence respecting them under the provisions contained in section 9 of this Regulation, it shall be competent to the Board of Revenue or other Authority exercising the powers of that Board, on being satisfied that ^h ^{is} guilty of the charge, to adjudge the zamíndár or ¹ ^{er} person so offending to pay such fine to Government ^{may} appear to it proper upon a consideration of his ^{neg} ^{acc} ^{ev} ^{tion} and circumstances in life, and of the offence which ^{may} have committed, and to levy the fine in the mode th ^{es} ^{cri} ^b ^e ^d for the recovery of arrears of revenue;

provided, however, that if the fine shall exceed five hundred rupees, the Board shall submit a report of the case to the Governor General in Council, and shall not proceed to levy the fine until they shall receive authority from Government for that purpose.

15. When the party whose lands it may be proposed to assess shall appear in conformity with the notice or summons, and shall deliver up his title-deeds, the Collector shall give a receipt for them, and, after duly examining them, shall deliver to the party a statement of the grounds on which his land may appear liable to assessment, with copies, on plain paper, of all documents on which his opinion may be founded.

The Collector shall then desire the party to deliver a written answer within seven days.*

16. It shall be the duty of the Collector or other officer exercising the powers of Collector carefully to number, mark, date and sign all documents produced by a zemíndár or other person in possession of the lands proposed to be assessed, in support of his claim to hold them

* Modified by Regulation IX of 1825, section 5.

free of assessment, or as parcel of an estate for which a permanent settlement shall have been concluded, and to insert in his proceedings the title and number of such documents, so that no doubt may exist in regard to their having been exhibited before him;

and the Collector shall, before proceeding to judgment, warn the party that no accounts or other documentary evidence of any kind which he shall not produce before him, and for not producing which he may not assign good and sufficient cause, will be received at any future period, either by the Revenue or Judicial Authorities, and shall record his having done so on the face of his proceedings.

17. On receiving the answer of the party, the Collector shall summon any witnesses he may deem necessary to support the claim of Government, with any which the party may desire to have summoned on his behalf, and shall take their depositions in judicial form, and in the presence of the party or his authorized agent.

18. The Collector shall carefully examine all documents that may be produced by the party, and shall likewise give the party access to inspect all documents on which he may rely in proof of the liability of the land to assessment.

19. *First.*—The Collectors and other officers exercising the powers of Collectors are hereby authorized to summon witnesses and administer oaths, or cause the execution of solemn declarations in lieu thereof, in all cases brought before them under this Regulation.

Second.—[*Repealed by Act No. XII of 1873.*]

Third.—[*Repealed by Act No. XII of 1876.*]

20. Having closed his proceedings, the Collector shall record his opinion in a *rúbakári* detailing the grounds on which it is founded, and whether the lands appear liable to assessment or otherwise, and shall forward his proceedings to the Board of Revenue or other Authority exercising the powers of that Board, in such mode as may be directed by that authority, furnishing the party at the

same time with a copy on plain paper of the final *rúbakárá* aforesaid, and reporting his having done so to the Board or other Authority aforesaid.

21. *First.*—The Board of Revenue or other Authority aforesaid, after calling for any further evidence which, on a consideration of the Collector's proceedings, they may deem wanting, shall, on a day to be fixed by a public notice affixed in the office, not being less than six weeks from the date on which the Collector may have furnished the party with a copy of his final *rúbakárá*, and after hearing anything which the party, if in attendance, may wish to urge in his own behalf, proceed to pass judgment in the case, and shall record their opinion in a *rúbakárá*, delivering a copy thereof to the party, on his requisition to that effect.

Second.—The final *rúbakárá*s which the Collectors and the Boards are by the provisions of this section directed to record shall contain a distinct statement of the subject-matter of the case, the grounds on which the decision may be given, the names of the witnesses whose depositions may have been taken, and the title of every exhibit read.

Third.—If the Board of Revenue or other Authority aforesaid pronounce against the assessment, the proceedings shall be considered final, except on proof in a Court of judicature of fraud or collusion in the previous inquiry.

Fourth.—In the event of the Board's declaring the lands liable to assessment, the Collector shall inform the party or his *vakíl* of the decision of the Board, and shall proceed to ascertain the limits of the land, and shall fix an assessment on the principles of the general Regulations on such information as may be procurable.

22. *First.*—If the party shall, within a fortnight of his receiving intimation of the Board's decision, tender to the Collector responsible security for the payment, from that date, of the *jama* which may eventually be fixed on the land, with interest at the rate of twelve per cent., and shall engage to institute a suit in the Court in

which the case may be cognizable within ten days, commencing from the date of the deed of security, or (if the Court shall be shut, and shall not be opened until after the expiration of such ten days) within three days, calculating from the day on which it may be opened, to try the justness of the demand, the Collector shall leave the party in possession as before, reporting the circumstance for the information of the Board ;

provided, however, that in such cases the party shall produce all his accounts of collections for the information of the Collector,

Proviso. in estimating the amount of the security to be required.*

Second.—If the party be willing to give security for a portion only of the jama eventually assessable on the land, it shall be competent to him to do so on the conditions above specified.

Procedure of Collector if party do not furnish full security.

In this case the Collector shall, under the orders of the Board, either hold the lands khás or farm them for such period as the Board may direct, and shall pay to the party a portion of the collections proportionate to the amount for which he may be willing and able to give responsible security.

Third.—It shall be competent to the Court to direct the Collector to take the security offered by the party, if he shall refuse to do so, and the Court shall be satisfied that it is sufficient ; but it shall rest with the Collector, subject to the directions of the Board, to fix the amount for which the surety is to be held bound.

Court may determine on sufficiency of security tendered.

Fourth.—The amount shall not, in the first instance, exceed the estimated annual revenue assessable on the lands, or the amount receivable by the party in one year, with interest ; but if, at the expiration of one year from the date on which the party may receive intimation of the Board's decision, the suit shall still be pending, it shall be competent to the Collector to require additional security for the same amount.

Amount of security how regulated.

* Modified by Regulation IX of 1825, section 5, and Regulation III of 1828, section 10 ; also see section 8 of the former.

Fifth.—In mukarrarís the parties giving security, and intending to sue, shall continue to pay the mukarrar íjama, and will be required to give security for the remaining revenue which may be eventually demandable from them.

Security in case of mukarrarís.

23. If the party do not give security, or, having given security, neglect to sue, the Collector shall proceed to the final assessment of the land.

Final assessment.

24. *First.*—Persons whose lands may be assessed, either in failure to give security, or to institute a suit within the prescribed time, shall nevertheless be entitled to sue any time within one year from the date of their being informed of the Board's decision; but after the above period shall have elapsed, the decision of the Board shall be final and conclusive;

provided, however, that in cases in which the party may be able to show good and sufficient cause for not having sued within the said period, such as minority or absence, no limitation as to time shall prevail other than that generally prescribed by the existing Regulations in regard to private claims.

Second.—[Repealed by Act No. XVI of 1874.]

25.—[Repealed by Act No. XVI of 1874.]

26. *First.*—In cases instituted in the Zila Court an appeal shall be received by the Court of Sadr Díwání Adálat.*

Appeal from Zila to Sadr Court.

Second.—The Sadr Díwání Adálat, in all cases of appeal being preferred in conformity with the provisions of this Regulation, shall, together with the decree against which such appeal may be lodged, likewise peruse the final rubákárá filed in the case by the Board of Revenue or other Authority exercising the powers of that Board; and if, on a consideration of those documents, the decision of the Court should appear unjust or erroneous or doubtful, or its proceedings in the case manifestly irregular or imperfect; or if, from the nature of the cause, as stated in the decree or otherwise, it shall appear to them of suffi-

Procedure on such appeal.

* See Regulation XIV of 1825, section 6.

cient importance to merit a further investigation in appeal, they shall admit a *special** appeal.

27.—[*Repealed by Act No. XVI of 1874.*]

28. *First.*—On the production of any written document purporting to be a farmán of any King of Dehli, or to be a sanad, parwána or other grant of any Wazír, or of any Nawáb, Rájá or other potentate or person formerly exercising authority in any part of the provinces and territories now subject to the British Government, it shall be the duty of the Revenue and Judicial Authorities before whom such document may be produced, to ascertain the validity and authenticity of it, by reference to such offices and records, and by the examination of such living witnesses, as may be likely to lead to the due appreciation thereof; and the said Authorities shall not receive such document in evidence merely on the credit of the seal, or other attestations impressed upon it, without some external evidence in corroboration of its authenticity.

Second.—Provided also, that no document of the above description which may be produced to any Court or Adálat shall be received, nor any proceedings held thereon, nor any faith given thereto, unless it shall be proved that the said document has been duly registered under the rules and requisitions of Regulations XIX and XXXVII, 1793, XLI† and XLII,† 1795; VIII, 1800‡; XXXI§ and XXXVI,§ 1803; and VII, 1808||; or unless due cause be shown for the non-registry. ¶

29. Whenever a Collector or other officer exercising the powers of Collector shall have reason to suspect the validity of the original tenure under which any land, subsequently commuted for a money-pension of the description noticed in Regulation applied to cases in which Collector suspects validity of original tenures of land, subsequently commuted for money-pensions.

* The word 'special' is repealed by Act No. XVI of 1874.

† Repealed by Act No. XIX of 1873.

‡ Repealed, except section 19, by Act No. XV of 1874 and Bengal Act No. VII of 1876.

§ Repealed by Act No. XIX of 1873.

|| Repealed by Act No. XXIX of 1871.

¶ See Regulation XIV of 1825, section 3.

tion XXIV, 1803,* and Regulation VI, 1817,* was held, it shall be competent to him, with the previous sanction of the Board of Revenue or other Authority exercising the powers of that Board, to proceed in the investigation of the tenure under which such land was held, in the same manner as Collectors are authorized by this Regulation to proceed in regard to the tenure of lands now held free of assessment; and if the Board shall be of opinion that the tenure was invalid, it shall be competent to them to resume the money-pension granted in consideration thereof, subject to an appeal to the Courts of judicature in the manner prescribed by this Regulation in cases in which the Board may direct the assessment of land held free of assessment:

provided, however, that it shall not be competent to the Revenue Authorities to resume any money-pension of the above description, of which the incumbent may have been in the enjoyment, under orders of the Governor General in Council, for a period of twelve years or more.

30. [*Repealed by Bengal Act No. VII of 1862.*]

This section was repealed by Act VII (B. C.) of 1862, which transfers suits for resumption to the Civil Courts.

31. *First.*—Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to the full benefit of all waste-lands included within the ascertained boundaries of such estates respectively at the period of the decennial settlement, and which have since been or may hereafter be reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the conditions of that settlement, and it being left to the Courts of judicature to decide on all contested cases, whether lands assessed under the provisions of this Regulation were included at the period of the decennial settlement within the limits of estates for which a settlement has been concluded in perpetuity, and to reverse the decision of the Revenue Authorities in any

Regulation not to affect right of proprietors to waste-land guaranteed at Permanent Settlement.

* Repealed by Act No. XXIII of 1871.

case in which it shall appear that lands which actually formed, at the period in question, a component part of such an estate, have been unjustly subjected to assessment under the provisions of this Regulation, the zamíndárs and other proprietors of land will be enabled, by an application to the Courts, to obtain immediate redress in any case in which the Revenue Authorities shall violate or encroach on the rights secured to them by the Permanent Settlement.

Second.—It is further hereby declared and enacted, that

Nor to warrant claim to additional revenue from lands permanently assessed on plea of error or fraud.

all claims by the Revenue Authorities on behalf of Government to additional revenue from lands which were at the period of the decennial settlement included within the limits of estates

for which a permanent settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, the case of lands expressly

Exception.

excluded from the operation of the settlement, such as lákhiráj and thána-

dárá lands, shall be, and be considered wholly illegal and invalid.

REGULATION XIII OF 1825.

*A Regulation to maintain the settlement made for certain lands held exempt from the payment of revenue by kánúngos in the Province of Bihár; and to provide for the future settlement of such lands, as well as of the lands composing other resumed lákhiráj tenures, with the present occupants, when so directed by Government.**

1. WHEREAS it was enacted by section 5, Regulation II of 1816,† that the revenue of lands

Preamble.

held by kánúngos, generally in the Province of Bihár, in virtue of their offices, should be liable to resumption; and accordingly, under that law, various resumptions of land so held took place, and the parties to whom the zamíndárá interest in the same appeared to belong were admitted to engage for the Government

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts. Act No. XV of 1874.

† Repealed by Act No. VIII of 1868.

revenue; but on the consideration of the proceedings held under the provisions of the above rule, it appeared to the Governor General in Council to be improper wholly to deprive the kánúngos or their representatives of the advantages derived from such lands, and enjoyed by them for a long course of years; and it was accordingly resolved by Government, on the 14th February, 1822, that, in cases where the lands had been occupied and managed by the kánúngos or their representatives, and the rents received by them, they should be replaced in possession of such lands, and a settlement made with them on the principle prescribed by clause second, section 8, Regulation XIX of 1793, *viz.*, the revenue to be paid to Government to be equal to one-half of the annual produce (or rental) of the lands, calculated according to the rates at which other lands in the pargana of a similar description may be assessed, securing to the proprietors of the soil such málíkána or other allowance as they might have received prior to the resumption of the official minháí tenure;

and whereas the existing laws relative to the settlement of resumed lákhiráj tenures are not properly applicable to the case, and it appears to be expedient expressly to provide for the maintenance by the Courts of judicature of the arrangement above described, in order that the kánúngo minháídárs may be secured in the possession (subject to the quit-rent fixed by Government) of the lands, rents and produce heretofore possessed by them;

and whereas it is desirable to provide for the settlement, on the same principle, of any lands that may be resumed under the corresponding rules relating to kánúngos and their official tenures in other parts of the country;

and whereas it appears to be generally expedient to make a distinct provision for securing to the holders of lákhiráj lands resumed by the officers of Government, and assessed on the principle prescribed in clause second, section 8, Regulation XIX, 1793, the benefits which that law was designed to bestow, and to declare the competency of Government, in other cases, to continue the persons who have heretofore occupied lands free of assessment, or their representatives, in the possession of the same, notwithstanding such lands being made subject to assessment, the following rules have been enacted for these purposes respect-

ively, to be in force throughout the territories subject to the Presidency of Fort William from the date of the promulgation of this Regulation.

2. In case of lákhiráj tenures resumed under the provisions of Regulation IV, 1808,* Regu-

Power to continue minháídárs and their heirs in possession of resumed lands heretofore held as lákhiráj by kánúngos.

lations II † and V, 1816, or any other Regulation in force relative to lands held by kánúngos by virtue of their offices, where the minháí or lákhiráj tenure, and the right of property in

the land, are vested in distinct parties, it shall be competent to the Governor General in Council, by instruction to the Revenue Board or other Authority empowered to make the resumption, to continue the minháídárs and their heirs in possession and management of such lands, subject to such assessment as he shall judge it proper to direct; and the parties claiming the zamíndarí interest or other proprietary right in such maháls shall not be entitled to any land-rent, produce or profit beyond what they may have enjoyed up to the period of the resumption of the tenure, or would have been entitled to receive, in the event of Government having confirmed the same in perpetuity, free of assessment.

Persons consequently, claiming to be málíks of the said lands, who, during the continuance of the lákhiráj tenure, had not possession of the same, whether they received a málíkána allowance or otherwise, shall not disturb the possession of the minháídárs or their heirs and representatives, in any case wherein the Governor General in Council may have sanctioned such possession; and any suit preferred by such persons in a Court of judicature to recover possession, contrary to the intent and meaning of this rule, shall be dismissed with costs.

Provided, however, that in all cases of the nature above-mentioned, wherein the zamíndár or other proprietor of the land may have received málíkána or other proprietary due during the existence of the lákhiráj tenure, he shall continue to receive the same, notwithstanding the resumption of the lákhiráj in like manner as if such resumption had not taken place.

* Repealed by Act No. XIX of 1873.

† Repealed by Act No. VIII of 1868.

3. The tenures of the minháídárs which have been confirmed to them with the sanction of Government by the arrangement referred to in the preamble of this Regulation, or which may be so confirmed in conformity with the preceding section, are declared to be hereditary and transferable; but should they escheat to Government, the parties possessing a zamíndarí interest or other proprietary right in the lands will be admitted to engage for the revenue subject to a fresh assessment to be adjusted on the actual assets under the general Regulations.

4. The principles of sections 2 and 3 of this Regulation shall be considered applicable to all cases of lákhiráj resumption under the general Regulations in force, which may come within the favourable rule of assessment contained in the second clause of section 8, Regulation XIX, 1793, in the Provinces of Bengal, Bihár and Orissa; or the second clause of section 8, Regulation XLI, 1795,* in the Province of Benares, it being the evident intention of the rule in question that it should be applied to persons who had been long in possession of the lákhiráj tenures made subject to assessment by the Regulations above cited; and whom it appeared equitable, in consideration of their long possession, to leave in occupancy of the lands composing their respective tenures, at a moderate assessment, not exceeding a moiety of the annual rent-produce.

5. In modification of the existing rules contained in Regulations XXVII, 1793, XLII, 1795,* and XXXVI, 1803,* or any other Regulation in force, relative to the settlement of resumed jágír, altamghá, madadmásh, aima or other bádsháhí grants, and to resumption of lákhiráj tenures, generally in qualification and explanation of all the rules in force relative to the resumption of lákhiráj tenures, and the future assessment of lands composing the same, it is hereby further declared that

* Repealed by Act No. XIX of 1873.

whenever such tenures may be pronounced invalid or extinct by a Revenue Board or other Authority empowered to investigate the lákhiráj title in such tenures, under the provisions of Regulation II, 1819, or of any other Regulation in force, it shall be competent to the Governor General in Council, on a special report of the circumstances of the case, when it may appear just and proper in consideration of the long possession of the actual occupant of the land or of his ancestors, to direct his continuance in possession, though not the zamíndár, taluqdár or other málík of the land, on his engagement for the future assessment on such terms as may be prescribed by Government, and in such cases the whole of the provisions contained in sections 2 and 3 of this Regulation shall be deemed applicable, and be maintained by the Courts of judicature accordingly.

REGULATION XIV OF 1825.

*A Regulation to declare the extent of the authority possessed by the Revenue-authorities, subordinate to the Governor General in Council, in the confirmation of lákhiráj tenures ; to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters previously to the acquisition of the country by the British Government ; and to provide for the due application of the general laws and regulations respecting lands held free of assessment, to the territory ceded by Govind Ráo to the British Government, and annexed to the zila of Bundelkhand, under the provisions of Regulation II, 1818.**

1. WHEREAS doubts have arisen as to the extent of the authority possessed by the Revenue-authorities subordinate to the Governor General in Council, in regard to the confirmation of lákhiráj tenures, which it is expedient to remove ; and it is also desirable further to define the principles to be followed in determining on the force and validity of grants made by

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

persons exercising authority in different quarters, previously to the acquisition of the country by the British Government; and it is necessary to make provision for the due application of the general rules in force relative to lákhiráj tenures, to the territory ceded by Govindo Ráo to the British Government, and annexed to the Zila of Bundelkhand, under the provisions of Regulation II, 1818 ;*

and whereas it is enacted by clause first, section 26, Regulation II, 1819, that in suits instituted in the Zila Courts to contest the decisions passed by the Revenue Boards, under the provisions of that Regulation, a special appeal only shall lie in the Provincial Courts, and that in like manner in cases decided in the first instance by a Provincial Court, excepting cases ultimately appealable to the King in Council, an appeal shall be received by the Sadr Díwání Adálat on special grounds only; and it appears to be expedient that the above restriction should not apply to cases wherein the decision of the Court may be opposed to the judgment of the Board of Revenue or other Authority exercising the powers of that Board, but that such cases should be open to a regular appeal,

the following rules have been enacted, in addition to, and in modification of, the provisions of Regulations XIX and XXXVII of 1793, Regulations XLI† and XLII† of 1795, Regulations XXXI† and XXXVI† of 1803, of such parts of Regulations VIII† and XII of 1805 as refer to lákhiráj lands, and of Regulation II of 1819; to be in force from the date of their promulgation throughout the Provinces immediately subject to the Presidency of Fort William.

2. It is hereby declared and enacted, that the power of granting lákhiráj tenures, *viz.*, tenures of land exempt from the public assessment, either for life or in perpetuity, as well as of confirming such tenures excepting by a regular judgment passed after a judicial inquiry, belongs, and always has belonged, exclusively to the Supreme Government; and no act, order or decision, granting or confirming any tenure as aforesaid within any

Lákhiráj tenures under what circumstances alone valid.

* Repealed by Act No. XV of 1874.

† Repealed by Act No. XIX of 1873.

of the territories subordinate to this Presidency, after the annexation of such territories to the British dominions shall be held valid, unless the same shall have been done, issued or passed by or under the immediate directions of the Governor-General in Council, or by some officer expressly authorized by Government to grant or confirm such tenures, or with respect to the confirmation of grants duly authorized by some competent Court of judicature in a suit regularly tried and decided by it, or by one of the Revenue Boards acting in a judicial capacity, under the rules of Regulation VIII of 1811,* whilst that Regulation (rescinded by section 2 of Regulation II of 1819) was in force; and subsequently under the rules of Regulation II, 1819, or any other Regulation expressly empowering the Revenue Boards, after full investigation of claims to exemption from assessment under the general rules applicable to *lakhiraj* tenures, to pronounce a decision against the assessment, to be considered final, except on proof, in a Court of judicature, of fraud or collusion in the previous inquiry.

Provided also, that no resolution or order passed by the Lieutenant-Governor and the Board of Commissioners, in the Ceded and Conquered Provinces, the Board of Revenue or other Authority exercising the powers of that Board, whereby the right of Government to assess any *lakhiraj* lands may have been relinquished or postponed, save and except decisions regularly passed according to the rules above cited, shall operate to the prejudice of Government, or be held to bar the Revenue-authorities from proceeding for the recovery of public dues under the provisions of Regulation II, 1819, or any other rules in force relative to the resumption of *lakhiraj* tenures held under invalid grants.

3. *First.*—The following principles are to be observed in determining the force and validity of grants made by persons exercising authority in the Provinces subordinate to this Presidency, previously to the acquisition of the country by the British Government.

Trial of validity of grants.

* Repealed by Reg. II of 1819.

Second.—Lákhiráj tenures of which uninterrupted possession shall have been held exempt from assessment at and subsequently to the periods under-mentioned shall be, and be considered to be, valid, without evidence to any formal grant or confirmation of the same; and shall be continued to heirs in cases in which it may be clearly shown, from the nature and denomination of the tenure, that it is hereditary according to the ancient usage of the country, *viz.*, the 12th August, 1765, if the tenure be in Bengal, Bihar or Orissa (excepting Katak); the 14th October, 1791, if the tenure be in Katak, including Patáspur or its dependencies; the 1st July, 1775, if the tenure be in the Province of Benares; the 10th November, 1789, if the tenure be in the Provinces ceded by the Nawáb Wazir in November, 1801; the 1st January, 1792, if in any of the Provinces ceded by Daolat Ráo Scindia and the Peishwa, under the treaties of the 16th and 30th December, 1800; the 1st November, 1805, if in the pargana of Khanda or other territory ceded by Náná Govind Ráo on the 1st November, 1817.

Provided, however, that the above rule shall not apply to cases of derivative tenures, wherein it may appear that the tenure is derived from a jágírdár or other person, who, at any of the periods above specified, held lands free of assessment under a temporary or conditional tenure.

In all such cases, the parcels of the land so held shall follow the condition of the principal tenure; and if that be resumable, will consequently be liable to resumption.

Third.—The proof of possession in the cases provided for by the preceding clause, and (in the case of persons not the original grantees) of the hereditary nature of the tenure shall be on the parties claiming to hold or recover the lákhiráj tenure; the general principle being that the Ruling Power is entitled to a certain proportion of the produce of every bíghá of land, excepting so far as it shall have transferred, relinquished or compounded its right thereto; and all parties claiming the benefit of such exemptions being bound to establish their respective claims and titles.

The general presumption is in favour of the liability to assessment of ; and by Regulations XIX of 1793 and XIV of 1825, the *onus pro.*

bandi lies on a claimant to lákhiráj to establish his title to exemption, not by inferences, but by positive proof of a grant made by some one to hold in lákhiráj and by hereditary right prior to 12th August 1765, and that possession was *bonâ fide* taken under it, or an enjoyment of lands as such, and descendible to heirs at and since that time.

The right of Government to institute proceedings under Regulations II of 1819 and III of 1828 for resumption of lands is barred by limitation under cl. 2, s. 2, Regulation II of 1805.—Suth. P. C. II., 8.

Fourth.—Provided also, that although one or more successions to any tenure as aforesaid may have taken place before the periods specified in the second clause, the fact shall not be taken to establish a title of inheritance, unless the tenure be clearly of an hereditary nature; or unless the right of inheritance therein shall have been admitted by the Governor General in Council on a reference made to Government according to the rules in force applicable to such cases.

Fifth.—The Courts of judicature and Revenue-authorities shall not recognize any potentate or person as having been vested with the supreme power within any part of the Provinces subordinate to this Presidency, save and except the Kings of Delhi, the Súbahdárs of Bengal, Bihár and Orissa, and the several Authorities specified in Regulation XLII, 1795,* Regulation XXXVI, 1803* and Regulations VII* and XII, 1805; and with respect to the territory ceded by Náná Govind Ráo, save and except Rájá Chattarsál and his predecessors, previously to the Mahrátha conquest of that territory in the year 1802 of the Sambat era (corresponding with 1730 of the Christian era), and subsequently thereto His Highness the Peishwa, who then obtained the supreme authority in the territory referred to.

If in any case grants shall be produced, purporting to have been made or confirmed by any other person than as aforesaid, alleged to have been vested with the supreme power for the time being, and it shall appear to the Court or other Authority investigating the same that the plea is well founded, the Court or other Authority before whom

* Repealed by Act No. XIX of 1873.

the case may be depending shall, before passing any decision thereupon, refer the point to the Governor General in Council and be guided by his determination.

Conditions requisite to establish validity of grants by such potentates, &c. *Sixth.*—To the validity of grants made or confirmed by the Kings of Delhi or by any of the Rulers aforesaid, it is and shall be held to be necessary ;

1st,—that they were made or confirmed within the period during which the person granting or confirming the same possessed and exercised supreme power within the territory in which the lands specified in the grant are situate :

2nd,—that the grantee actually and *bonâ fide* obtained possession of the land granted within the said period :

3rd,—that the grant was not subsequently resumed by the officers or the orders of the Government for the time being previously to the acquisition of the country by the British Government, or if so resumed, that the competence of the officer to resume shall have been expressly disallowed by the Governor General in Council.

Seventh.—The following shall be held for the purposes specified in this Regulation, to be the periods at which the several Provinces subordinate to this Presidency were acquired by the British Government, *viz.*, for Bengal, Bihâr and Orissa (excepting Katak), the 12th August, 1765 ; for Benares, the 1st July, 1775 ; for the Provinces ceded by the Nawâb Wazîr, the 1st January, 1801 ; for the Provinces ceded by Daolat Râo Scindia and the Peishwa, the 1st January, 1803 ; for the Province of Katak, Patâspur and its dependencies, the 14th October, 1803 ; for the pargana Khandâ and the other territory ceded by Nânâ Govind Râo, the 1st November, 1817.

Conditions necessary to validity of grants not made or confirmed by supreme power. *Eighth.*—To the validity of grants not made or confirmed by the supreme power (excepting tenures of long possession described in the second clause of this section), it shall be held to be necessary ;

1st,—that they were made or confirmed by some authority which the Governor General in Council shall have expressly declared competent to make or confirm the same :

2nd,—that the grantee actually and *bonâ fide* obtained

possession of the land granted, and that the revenue of the land was not subsequently resumed by competent authority.

Ninth.—Provided also, that in cases in which any lákhiraj tenure may have been resumed previously to the acquisition of the country by the British Government, the determination of the question whether the officer by whom or by whose order the resumption may have been made was legally competent to do so, shall, in all cases wherein it may be necessary to determine this question, rest with the Governor General in Council.

Moreover, all questions touching the validity of grants made or confirmed by any officer subordinate to the supreme Power, or the legal effect of resumption by any such officer which may not have been expressly provided for by the Regulations, and which may be material to the decision of any suit or inquiry, shall be referred by the Courts of judicature or other Authorities making the investigation to the Governor General in Council for determination, unless the powers and competence of the officer in question shall have been previously determined by Government.

4. Nothing in this Regulation shall be construed to affect the provisions contained in Regulation XIX, 1793, Regulation XLI, 1795,* Regulation XXXI, 1803* and Regulation XII, 1805, relative to lands not exceeding ten bighás of which the produce is *bonâ fide* appropriated to religious or charitable uses.

5.—[*Repealed by Act No. XII of 1873.*]

6. In modification of the rules contained in section 26, Regulation II, 1819, it is hereby enacted, that in cases wherein a Zila Court shall annul or alter a judgment passed by the Board of Revenue or other Authority exercising the powers of that Board, under the provisions of the above-mentioned Regulation, a regular appeal shall lie.

The provisions of the above-mentioned section shall however still be applicable to cases in which the Zila Courts may maintain the decisions of the Revenue Boards or other Authorities exercising the powers of these Boards.†

* Repealed by Act No. XIX of 1873.

III of 1828, section 10, clause 4.

PART X.

Land Acquisition.

ACT No. X OF 1870.

(Received the assent of the Governor General on the 1st April 1870.)

An Act for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called “The Land Acquisition Act, 1870 :”

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of June 1870.

2. On and from such day Act No. VI of 1857 (*for the acquisition of land for public purposes*) and Act No. XXII of 1863 (*to amend*) shall be repealed.

Repeal of Acts. Act No. VI of 1857), and Act No. XXII of 1863 (to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

Interpretation-clause. 3. In this Act—

The expression ‘land’ includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

The expression ‘person interested’ includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act :

The expression ‘Collector’ means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act :

The expression ‘Court’ means, in the Regulation Provinces, British Burmah, and Sindh, the principal Civil Court of original jurisdiction,

and in the Non-Regulation Provinces other than British Burmah and Sindh, the Court of a Commissioner of a Division,

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression ‘Court’ means the Court of such officer ;

The expression ‘Company’ means a Company registered under The Indian Companies Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent ;

And the following persons shall be deemed persons ‘entitled to act’ as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act,

and, whether of full age or not, to the same extent as if she were unmarried and of full age; and the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality :

to dig or bore into the subsoil :

to do all other acts necessary to ascertain whether the land is adapted for such purpose :

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon :

to mark such levels, boundaries, and line by placing marks and cutting trenches :

and, where otherwise the survey cannot be completed

and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier there-

Power to enter and survey.

Power to clear land.

Power to mark out line.

Previous notice of entry.

of) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

Declaration of intended Acquisition.

6. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some Municipal Fund, or by a Company.

The declaration shall be published in the local official Gazette and shall state the District or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereon) a plan to be made of the same.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue District in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The Collector may also require any such person to deliver to him a statement containing so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Every person required to make or deliver a statement under this section or section nine, shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-

five and one hundred and seventy-six of the Indian Penal Code.

Enquiry into Value and Claims.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Enquiry into value and amount of compensation.

Tender. .

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon witnesses.

12. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

Postponement of enquiry.

13. In determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section twenty-four, and shall not take into consideration any of the matters mentioned in section twenty-five.

Matters to be considered and matters to be neglected.

Award by Collector.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award in case of agreement as to compensation.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Award to be filed and to be evidence.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed, if no claimant attends, or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court, or if any person whom the Collector has reason to think interested does not attend, or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed, or if upon the said enquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof, the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

16. When the Collector has made an award under section fourteen or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. In making a reference under section fifteen, the Collector shall state for the information of the Court, in writing under his hand,

Collector's statement
on reference to Court.

(a) the situation and extent of the land needed,
(b) the names of the persons whom he has reason to think interested in such land,

(c) the amount awarded for damages and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and

(d) the grounds on which the amount of compensation was determined.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

Service of notice.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them, to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Power to appoint an assessor.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Determination of amount.

22. If before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

Appointment of new assessor.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting or becoming incapable were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or neglecting or becoming incapable.

Powers of new assessor.

23. Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead and act, or to appear and act (as the case may be), in such proceeding.

Proceedings to be in open Court.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

Matters to be considered in determining compensation.

First, the market-value, at the time of awarding compensation, of such land ;

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fees shall not exceed five hundred rupees.

Such fees shall be deemed to be costs in the proceeding.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

It shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

The costs (if any) payable by the person interested and not deducted under section forty-two may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds

five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

An appeal from the decision of a judicial officer appointed to exercise the functions of a Judge under Act X of 1870 within the town of Calcutta lies to the High Court sitting to hear appeals from decisions by the Court in its Original Civil Jurisdiction.

The words 'District Judge' in s. 35 include the High Court in its appellate jurisdiction, and there is nothing in the definition of those words given in Act I of 1868, s. 2, cl. 12, opposed to this meaning.—13 B. L. R., 189.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure,

- (a) as to adding parties,
 - (b) as to adjournment,
 - (c) as to death, marriage and bankruptcy or insolvency parties,
 - (d) as to summoning witnesses and their attendance,
 - (e) as to examination of parties and witnesses,
 - (f) as to production of documents, and
 - (g) as to commissions to examine absent witnesses and to make local enquiries,
- shall apply, so far as may be, to proceedings before the Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

38. When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same, or any part thereof, the Collector shall refer such dispute to the decision of the Court.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

Determination of proportions. An appeal shall lie from such decision to the High Court, unless the Judge, whose decision is appealed from, is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

In a case before the Sudder Dewanny Adawlut, it was contended that the putneedar is not entitled to any of the compensation; that at most he can only claim remission of rent, and even that will depend on the terms of his lease; that if he were allowed to pocket the compensation, he might throw up the land, and the whole loss would fall on the zemindar, who would have the putnee returned on his hands with diminished assets. The Sudder Dewanny Adawlut laid down the following principles:—"The zemindar and the putneedar are entitled to compensation in proportions to losses which they respectively sustain from the appropriation of their the lands, and to the remission of the rents which they pay respectively to the Government or the zemindar. The putneedar holds his estate from the zemindar on very much the same conditions as the zemindar holds from the Government. Both enjoy their estates in perpetuity, subject to the payment of a fixed rent. Both are entitled to the surplus proceeds of the sale if their estates are sold for arrears of rent or revenue, and it may be doubted whether, in the event of the putnee being sacrificed by the sale of the zemindari, the putneedar would not have a remedy in some shape against the zemindar. The cases are numerous in which the putneedar could obtain thousands by private sale for his interests, while the zemindar could not obtain hundreds for his. The proper principle is as follows:—"In respect to remission, as the gross rental of the whole putnee is to the gross rent of the land proposed to be taken, so will the entire putnee rent be to the particular portion of the rent to be remitted? and with regard to compensation, the principle may most conveniently be stated as follows:—As the gross profits of the putnee is to the profits of the putneedar, so will the gross compensation be to the portion of the compensation the putneedar is entitled to recover."—S. D. A., 1860, p. 328.

Under s. 39 of the Land Acquisition Act, it is the duty of the Judge, in apportioning the compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money. *Seemle*.—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under s. 39.—I. L. R., 7 Calc., 406.

Where a *putnee* and a *durputnee* have been given of land which is afterwards acquired by the Government for public purposes, the zemindar is, generally speaking, entitled to as much of the compensation-money as the *patneedar* is.

As a rule, ryots having a right of occupancy in such lands, and the holders of the permanent interest next above the occupancy ryots, are persons entitled to the larger portion of the compensation-money.—
I. R., 7 Cal., 585.

There is nothing in Act X of 1870 which gives the Judge and Assessors sitting together power to determine the right to compensation, or the title to the land for which compensation is to be assessed. Where therefore a Collector tendered compensation in respect of land, some of which was above, and some below, high-water mark, and made an offer for each separately,—*Held*, that the Judge and Assessors had no power to award the whole sum tendered by the Collector as compensation for the land above high-water mark; but they should have determined what was a proper compensation for each description of land.—15 B. L. R., 197.

The Government has not yet issued final orders as to the principle on which compensation to occupancy ryots should be awarded. It is contended by some that, under the existing law, such rights are not salable, and therefore have no marketable value, and hence no compensation should be given. In referring the point, Mr. Smith, Commissioner of Orissa, says:—"The value to be paid by Government when it acquires land, is not the value of any one interest, but the aggregate value of all interests. The zemindar is entitled to receive the value at which he could sell his zemindari right; a *putneedar*, to the value of his *patni* interest; a leaseholder is entitled to be paid for the injury done him by taking the land comprised in his lease; and the ryot is entitled to be paid for the injury caused him by his deprivation of his land. The Government award must, in equity, cover all these interests."

PART V.

PAYMENT.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal:

Payment of compensation to whom made.

Provided that nothing herein contained shall affect the liability of any person who may

Proviso.

receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

In proceedings under the Land Acquisition Act, ss. 38 and 39, the persons entitled to take land compulsorily deal only with those who are in possession of it, or who are ostensibly its owners. It may happen that the real owner, being an infant, or a person otherwise under disability,

does not appear, and is not dealt with in the first instance. There is, therefore, a proviso in s. 40 to the effect that nothing contained in that or the preceding sections "shall affect the liability of any person who may receive the whole or any part of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto." This applies only to persons whose rights have not been dealt with in adjudications in pursuance of ss. 38, 39 and 40; and does not permit a person whose claim has been disposed of in the manner pointed out in the Act, to have that claim reopened, and again heard, in another suit.—I. L. R., 7 Calc., 388; 22 W. R., 38, dissented from.

41. When the amount of the compensation has been settled under section fourteen, if the persons interested shall so desire, the Collector shall, on the making of the said award, pay the amount of such compensation, and take possession of the land :

Payment on making
award by Collector.

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under Part II or Part III of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section twenty-four.

Percentage on mar-
ket-value.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded, and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession :

Payment with inter-
est.

Provided that the costs, if any, payable to the Collector by the person interested, shall be deducted from such amount and percentage.

Provided that, in cases where the decision of the Court under Part III or Part IV of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

Time of payment in
appealable cases.

PART VI.

TEMPORARY OCCUPANCY OF LAND.

43. Subject to the provisions of Part VII of this Act
 Temporary occupation of waste or arable land. whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.
 Difference as to compensation.

44. On payment of such compensation, or on executing such agreement, or on making a reference under section forty-three, the Collector may enter upon, and take possession of the land, and use or permit the use thereof, in accordance with the terms of the said notice.
 Power to enter and take possession.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land, and not provided for by the agreement, and shall restore the land to the persons interested therein:
 Restoration of land taken.

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require the Local Government shall proceed to acquire the land as if it was needed permanently for a public purpose, or for a Company.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court; and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

Difference as to condition of land.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

46. Subject to such rules as the Governor General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

Company may be authorized to enter and survey.

In every such case, section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the Company" were inserted.

Construction of sections four and five.

47. The provisions of sections six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Consent of Local Government to acquisition.

Execution of agreement.

48. Such consent shall not be given, unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

Previous enquiry.

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means, and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

49. Such officer shall report to the Local Government the result of the enquiry; and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor General of India in Council may, from time to time, prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely:—

(1) The payment to Government of the cost of the acquisition:

(2) The transfer, on such payment, of the land to the Company:

(3) The terms on which the land shall be held by the Company:

(4) The time within which, and the conditions on which, the work shall be executed and maintained: and

(5) The terms on which the public shall be entitled to use the work.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Agreement with Secretary of State in Council.

Publication of agreement.

PART VIII.

MISCELLANEOUS.

51. Service of any notice under this Act shall be made
 Service of notice. by delivering or tendering a copy thereof signed, in the case of a notice under section four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

52. Whoever wilfully obstructs any person in doing
 Obstruction to survey, any of the acts authorized by section
 &c. four or section eight, or wilfully fills
 Filling trenches. up, destroys, damages, or displaces any
 Destroying land- trench or mark made under section
 marks. four, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

53. If the Collector is opposed or impeded in taking
 Magistrate to enforce possession under this Act of any land,
 surrender. he shall, if a Magistrate, enforce the
 surrender of the land to himself; and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

54. Except in the case provided for in section forty-
 Government not four, nothing in this Act shall be
 bound to complete ac- taken to compel the Government to
 quisition. complete the acquisition of any land,
 unless an award shall have been made for a reference directed under the provisions hereinbefore contained.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight, and not already paid for under section five, and shall pay such amount to the person injured.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole such house, manufactory, or buildings shall be so acquired.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

58. No suit shall be brought to set aside an award under this Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

All such rules, alterations, and additions shall, when sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

XI.

Land Registration.

REGULATION VIII OF 1800.

*A Regulation for preparing a general Pargana Register of lands ; and for certain alterations in the prescribed registers of estate paying revenue, and lands held exempt from the payment of revenue.**

1 to 18—[*Repealed by Bengal Act No. VII of 1876.*]

19. By section 26, Regulation XIX, 1793, section 21, Regulation XXXVII, 1793, and the corresponding sections in Regulations XLI† and XLII,† 1795, all lands held exempt from the payment of revenue, which the holders may have omitted

Extension of period for registration of bādsháhí grants, and assessment thereafter of all unregistered lands.

to register by the time prescribed in the publication therein referred to, are become subject to the payment of revenue, unless sufficient cause be shewn, to the satisfaction of the Governor General in Council, for their not having been registered within the limited period.

It appearing, however, that the publications directed in section 25, Regulation XIX, 1793, section 20, Regulation XXXVII, 1793, and the corresponding sections in Regulations XLI and XLII, 1795, have not in every instance been made as therein directed (namely, the publication respecting lands held under bādsháhí grants, in the principal kacháhrí of the holders of such grants ; and respecting other exempted lands, in the principal kacháhrí of every proprietor and farmer of land paying revenue to Government ; and of every Native Collector, in lands held khás by Government ; or when the estate, farm or khás land may consist of two or more whole parganas, or portions of parganas, in the principal kacháhrí of each pargana or portion of a pargana comprised in such estate, farm

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

† Repealed by Act No. XIX of 1873.

or khás land), the Collectors are hereby further directed, immediately on the receipt of this Regulation, to ascertain whether the publications above specified have been duly made as prescribed throughout their respective Collectorships; and if not, they are to cause the same to be made without delay, in the manner prescribed, as well as in their own kacháhrís, and in the kachárís of the Diwání Courts situated within their respective zilas; allowing the further period of one year from the date of such publications for the registry of lands therein specified.

After the expiration of such period, any unregistered land found to be held exempt from the payment of revenue is to be assessed, under the provisions contained in the above Regulations, whenever the same may be discovered;

and the Collectors are to enter lands so assessed (together with all other lákhiráj lands which may be brought upon the public assessment) in their succeeding register of estates paying revenue, as well as in their register of intermediate mutations.

ACT No. VII (B.C.) OF 1876.

[As amended by Act V of 1878 (B.C.)]

An Act to provide for the Registration of Revenue-paying and Revenue-free Lands, and of the Proprietors and Managers thereof.

WHEREAS it is expedient to make better provision
 Preamble. for the preparation and maintenance
 of Registers of Revenue-paying and
 Revenue-free Lands, and of the Proprietors and Managers
 thereof, and of certain Mortgages of revenue-paying lands:
 It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the “Land Registration
 Act, 1876,” and it shall come into
 Commencement. force from the date on which it may

be published in the *Calcutta Gazette* with the assent of the Governor-General, which date is hereinafter referred to as the commencement of this Act.

2. From the commencement of this Act, the Regulations mentioned in the schedule hereto Regulations repealed. annexed, to the extent specified in the third column thereof, shall cease to have effect in the Provinces subject to the Lieutenant-Governor of Bengal.

3. In this Act—unless there be Interpretation clause. something repugnant in the subject or context—

(1) ‘Civil Court’ means any Civil Court which is competent to hear and determine the matter with respect to which the words are used:

‘Estate.’

(2) ‘Estate’ includes

(a) any land subject to the payment of land-revenue either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government:

(b) any land which is entered on the revenue-roll as separately assessed with land-revenue (whether the amount of such assessment be payable immediately or prospectively) although no engagement has been entered into with Government for the amount of revenue so separately assessed upon it as a whole:

(c) Any land being the property of Government of which the Board shall have directed the separate entry on the General Register hereinafter mentioned.

The Board have directed that, under the provisions of art. (c), cl. 2. s. 3 of Act VII of 1876, B. C., the Noabad Taluks in Chittagong be deemed ‘estates,’ and that they be separately entered in the General Register of revenue-paying lands. (Board’s No. 86A, of 8th March 1882, to the Commissioner of Chittagong.)

(3) ‘Extent of interest’ means the share or interest in an estate or revenue-free property of which the person with respect to whom the words are used is in possession as proprietor or manager.

(4) 'Lieutenant - Governor' means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

(5) 'Local Division' means a subdivision, parganah, thanah, police division of jurisdiction, or other division according to which the Mouzahwar Register of the district is arranged.

(6) 'Manager' means every person who is appointed by the Collector, the Court of Wards or by any Civil or Criminal Court to manage any estate or revenue-free property or any part thereof, and every person who is in charge of an estate or revenue-free property or any part thereof on behalf of a minor, idiot, or lunatic, or on behalf of a religious or charitable foundation.

(7) 'Mouzah' includes every village, hamlet, tolah, and other similar subdivision of land commonly in use in any district, by whatever name such subdivision may be known.

(8) 'Proprietor' means every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector.

(9) 'Recorded Proprietor' means any proprietor whose name, and the character and extent of whose interest in an estate or revenue-free property, stand registered in any General Register now existing or hereafter to be made under this Act.

(10) 'Revenue-free Property' means any land not subject to the payment of land-revenue which is included under one entry in any part of the General Register of revenue-free lands.

(11) 'Section' means a section of this Act.

(12) 'The Board' means the Board of Revenue of the Provinces for the time being subject to the Lieutenant-Governor of Bengal.

(13) 'The Collector' means the Collector of the District
'The Collector.' to which a Register relates.

'The District.' (14) 'The District' means the
District to which a Register relates.

PART II.

OF THE REGISTERS TO BE KEPT UP BY THE COLLECTOR.

Collector to keep Registers. 4. The Collector of every District shall prepare and keep up the following Registers :—

A.—A General Register of revenue-paying lands.

B.—A General Register of revenue-free lands.

C.—A Mouzahwar Register of all lands revenue-paying and revenue-free.

D.—An Intermediate Register of changes affecting entries in the General and Mouzahwar Registers.

5. The Registers shall be written in such forms, language, character, and arrangement of registers, and shall be arranged in such manner not being inconsistent with the provisions of this Act, as the Board from time to time may direct for each district.

The entries in each Part of the General Registers shall be numbered in one consecutive series for the whole district, and shall follow one alphabetical arrangement, running from the beginning to the end of the Part.

The General Register of revenue-paying lands. 6. The General Register of revenue-paying lands shall consist of two Parts :—

Part I.—Book of estates borne on the revenue-roll of the District.

Part II.—Book of lands situated in the district appertaining to estates borne on the revenue-rolls of other districts.

7. In Part I of the General Register of revenue-paying lands shall be entered the name of every estate which is borne on the revenue-roll of the district, and the following particulars relating to every such estate :

(a) name of the estate ;

(b) number of the estate on the revenue-roll of the district, and the annual amount of revenue for which it is liable ;

(c) names and addresses of the proprietors, managers, and mortgagees of the estate, with the character and extent of the interest of each proprietor, manager, and mortgagee ;

(d) name of every local division in which any lands of the estate are situated, whether in the district, or in any other district, with specification under each local division of

(i) the number of mouzahs containing such lands,

(ii) the name of each mouzah,

(iii) the number which each mouzah bears under the local division in the Mouzahwar Register, and

(iv) the area of land appertaining to the estate which each mouzah contains, if ascertained by survey or other authentic measurement,

(e) reference to entries made in the Intermediate Register after the preparation of the General Register.

8. In Part II of the General Register of revenue-paying

lands shall be entered the name of every estate which comprises lands situated in the district, but which is

borne on the revenue-roll of some other district, and the following particulars relating to every such estate :—

(a) name of the estate ;

(b) name of the district on the revenue-roll of which the estate is borne, with the number which the estate bears on that roll, the annual amount of revenue for which it is liable, and the number which the estate bears in Part I of the General Register of revenue-paying lands for its own district ;

(c) names and addresses of the proprietors, managers, or mortgagees of the estate, with the character and extent of the interest of each proprietor, manager, and mortgagee ;

(d) name of every local division of the district to which the Register relates, in which any lands of the estate are situated, with a specification under each local division of

(i) the number of mouzahs containing such lands,

(ii) the name of each mouzah,

(iii) the number which each mouzah bears under the local division in the Mouzahwar Register of the district, and

(iv) the area of land appertaining to the estate which each mouzah contains, if ascertained by survey or other authentic measurement ;

(e) reference to entries made in the Intermediate Register after the preparation of the General Register.

General Register of revenue-free lands. 9. The General Register of revenue-free lands shall consist of three Parts—

Part I.—Book of lands held exempt from revenue in perpetuity.

Part II.—Book of lands occupied for public purposes without payment of revenue.

Part III.—Book of unassessed waste lands and other lands not included in Part I or Part II of the General Register of revenue-free lands.

10. In Part I of the General Register of revenue-free

Part I of the General Register of revenue-free lands. lands shall be entered all lands held under badshahi, hukami, and other lakhiraj grants which have been declared to be valid by competent authority,

all lands in which the Government has conferred a proprietary title free in perpetuity from any demand on account of land-revenue, in consideration of the payment of a capitalized sum, or for any other reason,

and any lands of which the Board, on a full report of the circumstances of the case, shall have sanctioned the entry in this part of such Register

Part I of such Register shall, as far as possible, contain the following particulars in respect of each entry :—

(a) name of the revenue-free property with the character of the tenure—whether jaghir, altungah, devatter, bishan-pirit, purchased revenue-free, redeemed, or otherwise ;

(b) date of the grant or title being conferred ;

(c) nominal area granted ;

(d) names of the grantor and original grantee ;

(e) reference to any decree or other order of competent authority declaring or recognizing the grant to be valid ;

(f) names and addresses of the proprietors and managers of the revenue-free property, with the character and extent of the interest of each proprietor and manager ;

(g) name of every local division in which any land appertaining to the property is situated, whether in the

district, or in any other district, with specification under each local division of

- (i) the number of mouzahs containing such land,
- (ii) the name of each mouzah,
- (iii) the number which each mouzah bears under the local division in the Mouzahwar Register, and
- (iv) the area of land appertaining to the revenue-free property which the mouzah contains, if ascertained by survey or other authentic measurement, with specification of the number of each field according to the papers of such measurement;
- (h) reference to the entries in earlier Registers relating to the property or any part thereof;
- (i) reference to entries made in any Intermediate Register after the preparation of the General Register.

11. In Part II of the General Register of revenue-free

Part II of the General Register of revenue-free lands shall be entered all lands which are occupied by the Government, or by any public body, for public purposes, and on account of which no land-revenue is demanded.

It shall contain the following particulars:—

- (a) area of the land comprised in each entry;
- (b) names of the local divisions and mouzahs in which the lands are situated, with area in each mouzah, and a reference to the number under which each mouzah is entered in the Mouzahwar Register of the local division;
- (c) name of the department of Government or of the public body by which the land is occupied;
- (d) the purpose for which it is occupied;
- (e) the date and particulars of the appropriation of the land to such purpose;
- (f) reference to entries in the Intermediate Register made after the preparation of the General Register.

12. In Part III of the General Register of revenue-free

Part III of the General Register of revenue-free lands shall be entered all waste and other lands (not being included in any other part of the General Register) which are not assessed to land-revenue. It shall contain the following particulars:—

- (a) name and number of the lot, or other particulars identifying the property;

(b) area comprised in each entry ;

(c) name of every local division and mouzah in which lands of the property are situated, with area in each mouzah, and a reference to the local division and number under which each mouzah is entered under the local division on the Mouzahwar Register ;

(d) reference to entries in the Intermediate Register made after the preparation of the General Register.

13. If it shall appear to the Board that the circum-

Board may direct that three last sections shall not apply to any district.

stances of any district are such that it is not desirable or practicable to prepare the Register of revenue-free lands in the manner described in the

three last preceding sections, the Board may direct that the said sections shall not apply to such district, and may lay down rules, not being inconsistent with the provisions of this Act, in respect of the registration of revenue-free lands and of the proprietors and managers thereof, provided that such rules shall require the registration of the name of one or more persons as liable for the discharge of the duties and obligations referred to in section sixty-eight, in respect of all lands which under such rules may be registered as separate revenue-free properties.

Such rules, when they shall have been sanctioned by the Lieutenant-Governor and published in the *Calcutta Gazette*, and otherwise locally as the Lieutenant-Governor may order, shall, from such date as the Lieutenant-Governor may direct, have the same force as if they were included in this Act.

14. The Mouzahwar Register shall be kept up for the

Purpose of the Mouzahwar Register.

purpose of showing, in a connected form, the mouzahs situated in each local division, and the lands, whether revenue-paying or revenue-free, of which each mouzah consists.

15. The Mouzahwar Register shall be arranged and

Mouzahwar Register to be arranged according to local divisions.

divided according to subdivisions, pergunahs, thanas, police jurisdictions, or such other local divisions of the district as the Board may from time to time direct for each district ; the entries of mouzahs shall have a separate series of consecutive numbers, and a separate alphabetical arrangement for each local division.

The Mouzahwar Register shall contain the following particulars :—

(a) name of the mouzah ;

(b) total area of mouzah, if ascertained by survey or other authentic measurement, with a reference to the authority for the entry ;

(c) name of every estate or revenue-free property to which any of the lands of the mouzah appertain, with a reference to the entry of each on the General Register, and a specification of the area of land in the mouzah which appertains to each, if ascertained by survey or other authentic measurement, with a reference to the authority for such entry ;

(d) gross rental of the area of land in the mouzah which appertains to each estate or property, if such rental has been ascertained, during management of the lands, by the Collector or by other authentic means, with a reference to the authority for the entry ;

(e) reference to entries made in Intermediate Registers after the preparation of the Mouzahwar Register.

16. Intermediate Registers shall be kept up for the purpose of recording therein from time to time changes affecting the entries which stand in the General and Mouzahwar Registers, so that by a reference to them, in connection with those Registers, correct information up to date on the points recorded may be obtained at any time ; also for the purpose of keeping together, as far as possible, in a convenient form, the information which will eventually be required for re-writing the General and Mouzahwar Registers.

Division of the Intermediate Register.

17. The Intermediate Register shall consist of two Parts, as follows :—

Part I.—Book of changes affecting entries relating to revenue-paying lands.

Part II.—Book of changes affecting entries relating to revenue-free lands.

18. In Part I of the Intermediate Register shall be recorded, in a convenient form, all changes in the names of proprietors, managers, and (so far as this Act requires) mortgagees, and in the character or extent of the interest of each such proprietor, manager and mortgagee

Particulars of Part I of the Intermediate Register.

and such other changes affecting any entry standing in the General Register of revenue-paying lands, or any entry in the Mouzahwar Register relating to revenue-paying lands as cannot conveniently be entered against such entry in the General or the Mouzahwar Register. It shall contain the following particulars :—

(a) name of the estate affected with references to the number it bears on the General Register of revenue-paying lands, the number it bears on the revenue-roll, and the amount of revenue for which it is liable ;

(b) references to previous entries in the Intermediate Register relating to the estate ;

(c) particulars of the change, with a reference to the authority under which it is made ;

(d) the numbers borne by the entries in each part of the General Register of revenue-paying lands, and under each local division in the Mouzahwar Register, which are affected by the change here recorded.

19. In Part II of the Intermediate Register shall be

Particulars of Part II recorded all changes in the names of
of the Intermediate Register. proprietors and managers of revenue-free properties, and in the character

and extent of interest of each such proprietor and manager, and such other changes affecting any entry standing in the General Register of revenue-free lands, or any entry relating to revenue-free lands in the Mouzahwar Register as cannot conveniently be entered against such entry in the General or the Mouzahwar Register. It shall contain the following particulars :—

(a) Name and character of the revenue-free property to which the lands appertain, and number which it bears in any Part of the Register of revenue-free lands.

(b) Reference to previous entries in the Intermediate Register relating to the property.

(c) Particulars of the change, with a reference to the authority under which it is made.

(d) The numbers borne by the entries in the General Register and under each local division in the Mouzahwar Register which are affected by the change here recorded.

PART III.

OF THE PREPARATION AND MAINTENANCE OF THE REGISTERS

20. Until the Registers by this Act directed to be prepared are so prepared, the existing Old Registers to be in force till new Registers prepared. Registers now kept up in the office of every Collector shall be deemed to be the Registers kept up under this Act, that is to say—

The existing General Register of revenue-paying estates shall be deemed to be the General Register of revenue-paying lands.

The existing Pergunnah Register (Part II) of revenue-free lands shall be deemed to be the General Register of revenue-free lands, and the Mouzahwar Register in respect of revenue-free lands.

The existing Pergunnah Register (Part I) of revenue-paying lands shall be deemed to be the Mouzahwar Register in respect of revenue-paying lands.

The existing Register of intermediate mutations shall be deemed to be the Intermediate Register of changes affecting entries in the General and Mouzahwar Registers.

And all the provisions of this Act shall, as far as possible, be deemed to be applicable to such Registers and to the registration therein of the names and interests of proprietors, managers, and mortgagees.

21. The first General Registers and the first Mouzahwar Register under this Act shall be prepared for each district at such time as the Board may direct from the entries in the existing Registers mentioned in the last preceding section, and from any other authentic information available to the Collector.

22. The Board may order new Registers to be prepared whenever it may think fit, and such Board may order new Registers to be prepared. Registers shall be prepared from the Registers existing at the time of such order, and from the entries of subsequent changes in the Intermediate Registers, and from any other authentic information available to the Collector; and such additions to, omissions from, and alterations in, the entries as they appeared in the previous Registers, shall be made as subse-

quent changes have rendered necessary, and the authority for every change shall be expressly referred to.

23. Whenever, after the preparation of the General Registers, it may be necessary to bring any estate or revenue-free property on to any Part of such Registers on which such estate or property is not already borne, such estate or property shall be at once brought on to such Part under a new number, in continuation of the last number already borne on such Part: and a note referring to such entry shall be made in the place in the General Register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section 5.

24. Whenever, after the preparation of the Mouzahwar Register, it shall be necessary to enter any mouzah under any local division of such Register under which it is not already borne, such mouzah shall be at once brought under the proper local division with a new number, in continuation of the number borne by the last entry under such local division; and a note referring to such entry shall be made in the place in the Mouzahwar Register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section fifteen.

25. All new entries made in the General and Mouzahwar Registers after their preparation, as prescribed in the two last preceding sections, shall be made in chronological order.

26. After the General Register of revenue-paying lands shall have been prepared, a note shall from time to time be made on such Register against the estate affected

of every alteration which may be ordered by competent authority in the amount of revenue assessed on any estates;
 of every partition of an estate into two or more estates;
 of every change involving the removal of an estate from the Part of the Register on which it is borne;

of the redemption of every mortgage in respect of which the name of the mortgagee shall have been entered on the Register;

and in every such note reference shall be made to the authority under which the change was made.

In preparing the Register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand in the Register may be recorded in Part I of the Intermediate Register, as provided in section eighteen, and a reference shall be made in the General Register against the estate affected to every entry which may be made in the Intermediate Registers recording any such change.

27. After the General Register of revenue-free lands shall

Note on General Register of revenue-free lands. have been prepared, a note shall from time to time be made on such Register against the property affected

of every case in which lands entered as revenue-free may be declared liable to assessment, and assessed by competent authority ;

of every partition of a revenue-free property into two or more properties ;

of every change involving the removal of a revenue-free property from the Part of the register on which it is borne :

and in every such note reference shall be made to the authority under which the change was made.

In preparing the Register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand on the Register may be recorded in Part II of the Intermediate Register as provided in section nineteen.

28. Whenever it shall come to the notice of the Collec-

Collector. after making inquiry, may make change in his Register. tor that any change has occurred which affects any entry in his Registers, and renders necessary any alteration therein, the Collector, after making such inquiry as may be necessary, shall make such alteration :

Provided that notice shall be given to the recorded proprietors and managers of any estate or revenue-free property before any change is made in any way affecting such estate or property, and to every person whose name the Collector is about to register as proprietor or manager of any estate or revenue-free property, before such registration is effected ; and any objections which may be made to the proposed change or registration shall be duly con-

sidered by the Collector before he orders such change or registration to be made.

29. Whenever it shall appear to the Collector, in the course of an inquiry made in respect of an application under section thirty-eight or section forty-two, or otherwise, that any person whose name is recorded in the General Register as proprietor or manager, or joint proprietor or joint manager of an estate or revenue-free property, is no longer in possession of any interest in such estate or property as proprietor or manager, and that the names of other persons have been recorded as proprietors or managers of every portion of the interest in respect of which such proprietor's or manager's name was borne on the Register, the Collector may order the name of such person to be struck out from among the recorded proprietors or managers of such estate or property, and, if required, may grant him a certificate to that effect.

Information to be supplied to Collector. 30. To enable the Collector more effectually to maintain his Registers,

(a) Whenever any competent authority may direct that any estate be transferred from the revenue-roll of one district to that of another, the Collector of the district from the revenue-roll of which the estate is to be transferred shall transmit to the Collector of the district to the revenue-roll of which the transfer is to be made, a copy of all entries in any of the Registers relating to the estate to be so transferred, and entries taken from such copy shall be made in the proper Registers of the district to which the transfer is made.

(b) Whenever the Collector of any district shall make an entry, or any alteration of an entry, in his Registers, which will affect any entry required to be made under this Act in any Register of another district, such Collector shall transmit to the Collector of such other district copy of such entry as made or as altered, and the Collector to whom such copy is transmitted shall cause the necessary entries, or alteration of entries, to be made in the Registers of his district.

(c) Every proprietor and manager of an estate or revenue-free property in which any new village may be established, whether under the name of tolah, kismat, or

any other designation, shall forthwith give notice to the Collector of the establishment of such new village.

Provided that the Board may exempt any district or part of a district from the operation of this clause.

(d) Every proprietor and manager of an estate or revenue-free property, and any person holding any interest in land, or employed in the management of land, shall be bound, on the requisition of the Collector, to furnish any information required by the Collector for the purpose of preparing, making, or correcting any entry of the particulars specified in section seven, eight, ten, eleven, twelve, or fifteen, or to show to the satisfaction of the Collector that it is not in his power to furnish the required information. *

Such requisition shall be made by a notice to be served in the manner prescribed by section fifty, requiring the production of such information before a date mentioned in such notice.

31. Whoever, being bound by clause (c) of the last preceding section to give notice to the Collector of the establishment of any new village, or under clause (d) of the said section to furnish any information required by the Collector, shall voluntarily or negligently omit to give such notice or furnish such information, or to show to the satisfaction of the Collector that it is not in his power to furnish such information, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding fifty rupees for each day during which such person shall omit to furnish the information required under clause (d) after a date to be fixed by the Collector in a notice warning the person required to furnish such information that such further daily fine will be imposed.

Such notice shall be served in the manner prescribed by section fifty, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under any

such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

32. Whenever any Civil Court makes a decree confirming any transfer of proprietary possession which has already been made in any estate or revenue-free property, or gives effect to any decree transferring any such possession, such Court may order the transfer to be registered in the Registers of the Collector, and the Collector shall register such transfer accordingly.

33. All lands which are held without payment of rent, not being a revenue-free property entered in the General Register of revenue-free lands as prescribed by sections ten, eleven, or twelve, and not being a part of any such property, shall, for the purposes of this Act, be deemed to be a part of the estate within the local boundaries of which they are included; and if they are not included within the local boundaries of any one estate, then to be a part of such neighbouring estate as the Collector shall, by an order under his seal and signature, declare.

34. Whenever it shall appear to the Collector that any lands, which are not included in any estate as entered in the existing General Register, should be included in any such estate for the purposes of this Act, the Collector shall cause a notice, addressed to the person who is believed to be in possession of such lands, to be served in the manner prescribed by section fifty, and a general notice to be published as prescribed by section forty-nine, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may think fit to allow.

After the expiration of the said month or other period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said estate for the purposes of this Act.

35. Whenever it shall appear to the Collector that any land which is not entered on the General Register as a separate revenue-free property should be entered on the Register as such property, he may cause a notice to be served in the manner prescribed by section fifty, calling on the person in possession of such land as proprietor or manager to show cause why such land should not be so registered as a revenue-free property ; and if, after hearing any objections (which may be preferred within a month of the service of the said notice, or such longer period as the Collector may think fit to allow), and after making such further inquiry as may be necessary, the Collector shall be of opinion that the land should be so registered, he shall enter such land on the General Register as a revenue-free property, and by a notice served as prescribed in section fifty, as well as by a general notice published as prescribed in section forty-nine, shall require every proprietor and manager of such revenue-free property to apply for registration of his name and of the character and extent of his interest as such proprietor or manager, and thereupon every such proprietor and manager shall be deemed, for the purposes of section sixty-eight, to be a person who is required by this Act to apply for the registration of his name ; and all the provisions of Part IV of this Act, so far as may be practicable, shall apply to every such person.

Provided that no such proprietor or manager shall be liable to any fine under section sixty-five until after the expiration of three months from the date on which the last mentioned notice shall have been served.

Provided also that no land shall be entered as a revenue-free property in Part I of the General Register of revenue-free lands until the circumstances of the case shall have been reported to the Board, and until the Board shall have sanctioned such entry.

36. The Board may decide what revenue-free lands shall be included in each revenue-free property to be registered as such under this Act, and may from time to time direct that lands which are borne on the Register as forming one revenue-free

property shall be divided and entered on the Register as forming two or more such properties; and may similarly direct that revenue-free lands which are borne on the Register as forming two or more revenue-free properties, shall be united and entered as forming one revenue-free property.

The Board may also direct that any lands which are improperly borne upon the General Register of revenue-free lands shall be removed from such Register, or shall be omitted from any new Register of such lands which may be prepared.

37. Whenever it shall appear to the Collector that any land which is not included in any revenue-free property entered in the existing General Register should be included in any such property for the purposes of this Act, the Collector may cause a notice to be served on the person believed to be in possession of such lands in the manner prescribed by section fifty, and a general notice to be published as prescribed by section forty-nine, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may allow.

At the expiration of said month or of such period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said property for the purposes of this Act.

PART IV.

OF THE REGISTRATION AND MUTATION OF NAMES.

38. Every proprietor of an estate or revenue-free property or of any interest therein, respectively, being in possession of such estate, property, or interest, at the commencement of this Act,

Proprietor and manager to register within specified time.

every joint proprietor of an estate or revenue-free property being in charge of such estate or property, or of any

interest therein, respectively, on behalf of the other proprietors thereof, at the commencement of this Act,

and every person being manager of an estate or revenue-free property, or of any interest therein, respectively, on behalf of a proprietor thereof, at the commencement of this Act,

shall, if his name and the character and extent of his interest have not already been registered, make application, in the manner hereinafter provided, for the registration of his name and of the character and extent of his interest as such proprietor or manager, to the Collector of the district on the General Register of which such estate or property is borne, or to any other officer who may have been empowered by the Collector to receive such application, within such time as the Lieutenant-Governor may fix as hereinafter provided.

39. The Lieutenant-Governor shall, within six months from the commencement of this Act,

Lieutenant-Governor may fix date before which proprietor and manager must apply for registration.

fix for each district the date or dates before which such proprietors and managers, being in possession of estates or revenue-free properties, or of any

interest therein, respectively, at the commencement of this Act, shall be required to apply for registration of their names, and of the character and extent of their interests, under the last preceding section, and may at any time alter any date so fixed, provided that no date so fixed shall be later than five years after the said commencement.

40. The Lieutenant-Governor may in any district, for

Lieutenant-Governor may fix different dates in respect of different estates.

the purpose of the last preceding section, fix different dates in respect of estates and revenue-free properties, or in respect of different classes of

estates and revenue-free properties, or in respect of different portions of the district :

Provided that no person shall incur any penalty or disability under this Act for failure to apply for registration of his name as such proprietor or manager as aforesaid, until after the lapse of six months from the date on which the notice prescribed by the next succeeding section shall have been published in respect of his estate or property, or in respect of the class of estates or revenue-free properties within which his estate or property falls

or in respect of the portion of the district in which his estate or revenue-free property is situated.

41. Every date fixed by the Lieutenant-Governor as provided in the two last preceding sections shall be published by a notice
Publication of date fixed by Lieutenant-Governor. in the *Calcutta Gazette* ;

and also by notices to be posted up

at the Court or office of the Judge, the Magistrate, and the Collector of the district, in respect of which such date is fixed,

at the Court or office of every Moonsif, Subdivisional Officer, and Sub-Registrar of Assurances in such district ;

and at every police-station in such district ;

and by proclamation to be made by beat of drum at the head-quarters of such district, and in every place in which a subdivisional office is situated, and in such other places as the Lieutenant-Governor may direct.

The officer in charge of every Court, office, and police-station at which a notice is required to be posted up under this section shall certify to the Collector the date on which the notice was so posted up at his Court, office or police-station, and the latest date so certified shall be deemed to be the date of publication of the notice for the purposes of the two last preceding sections.

42. Every person succeeding, after the commencement
Persons succeeding to proprietary right in, or management of, estates to give information within six months. of this Act, to any proprietary right in any estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise ;

every joint proprietor of an estate or revenue - free property, assuming charge after such commencement of such estate or property, or of any interest therein respectively, on behalf of the other proprietors thereof ;

and every person assuming charge after such commencement of any estate or revenue-free property, or of any interest therein respectively as manager,

shall, within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the General Register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration

of his name and of the character and extent of his interest as such proprietor or manager.

43. Notwithstanding anything contained in section thirty-eight or the last preceding section, the Lieutenant-Governor may in any district exempt proprietors and managers of all or any estates which are liable to pay less than twenty rupees of land-revenue annually, and proprietors and managers of all or any revenue-free properties which consist of less than fifty acres of land, from the obligations imposed by this Act in respect of applying for the registration of their names, and may at any future time withdraw such exemption and require such proprietors and managers to register their names.

44. Every person who holds a mortgage of any proprietary right in any estate may apply to the Collector for registration of his name as such mortgagee, and of the interest in respect of which he is such mortgagee; and in such application shall specify whether he or the mortgagor is in possession. On receipt of such application the Collector shall proceed, as far as possible, according to the manner hereinafter prescribed in respect of applications for registration as proprietor.

45. Any application for registration under this Act may be presented by the applicant or by some person duly authorized by him in that behalf.

46. If the applicant under section thirty-eight or section forty-two is a joint proprietor in charge as aforesaid, or a manager, he shall in his application specify the name of the person or persons on behalf of whom he is in such charge or on behalf of whom he is manager, and the character and extent of the interest of every such person.

47. If the application under section thirty-eight or section forty-two be for registration of the name of the applicant as manager appointed by the Collector, the Court of Wards, or by any Civil or Criminal Court, the Collector shall register the name of the applicant,

on proof being produced to his satisfaction that the applicant has been so appointed to be such manager.

48. If the application be for registration otherwise than as manager appointed as mentioned in the last preceding section, and if it sets forth circumstances which would justify the Collector in registering the name of the person whose name is required to be registered, or if, after further inquiry, the Collector considers that such circumstances exist, he shall issue a notice requiring all persons who object to the registration of the name of the person whose name is required to be registered, or who dispute the character or extent of the interest in respect of which it is required to be registered, to give in a written statement of their objections, and to appear on a day to be specified in such notice, not being less than one month from the date of the publication thereof.

49. Such notice shall be published by affixing a copy of the same on or at all the following places:—

(a) the zemindari kutchery (if any) of the estate or other place at which the rents are ordinarily received;

(b) some conspicuous place in at least one village appertaining to the estate to which the application relates, and if the estate comprises lands situated in more than one local division, then in at least one village in each local division containing such lands;

(c) the office or Court of every Collector, Subdivisional Officer, Judge, and Moonsif, within whose jurisdiction, and every police-station within the jurisdiction of which any of the lands to which the application relates are known to be situated.

50. If the application alleges that the applicant has acquired possession of the interest in respect of which he applies to be registered by transfer from any living person, a copy of such notice shall be served on the alleged transferor by tendering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, or to some adult male member of his family; or in case it cannot be so served, by posting such copy upon some

conspicuous part of the usual or last known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

No fees or other costs shall be payable by the applicant in respect of the service or publication of the notice prescribed by this and the last preceding section.

51. No irregularity or omission in the publication or service of notice as required by the three last preceding sections shall affect the validity of any proceedings under this Act, unless it is proved to the satisfaction of the Collector that some material injury was caused by such irregularity or omission.

52. On the day fixed in the notice issued under section forty-eight, or as soon thereafter as possible, the Collector shall consider any objections which may be advanced, and make such further inquiry as appears necessary to ascertain the truth of the alleged possession of, succession to, or transfer of the estate, revenue-free property, or interest therein, in respect of which registration is applied for; and if it appears to the Collector that the possession exists,

or that the succession or transfer has taken place, and that the applicant has acquired possession in accordance with such succession or transfer,

but not otherwise,

the Collector shall order the name of the applicant to be registered in the proper Registers as proprietor or manager of the said estate, revenue-free property, or interest therein.

Provided that any person to whom any proprietary right in an estate has been mortgaged, may be registered as mortgagee, whether he be in actual possession or otherwise.

53. For the purpose of the enquiry mentioned in the last preceding section, and of every inquiry held under this Act, the Collector may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the

Irregularity in publication or service of notice not to affect validity of proceedings.

Inquiry by Collector.

Power to summon witnesses and compel production of documents.

same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.

54. All costs of any inquiry or proceeding held before the Collector under this Act shall, except as provided in section fifty, be payable by the parties concerned, and the Collector may pass such orders as he shall think fit in respect of the payment of such costs.

55. If the applicant's possession of, succession to, or acquisition by transfer of, the extent of interest in respect of which he has applied to be registered, is disputed by or on behalf of any person making a conflicting claim in respect thereof, and if it is not proved to the satisfaction of the Collector that any person is in possession of the interest in dispute, the Collector shall determine summarily the right to possession of the same, and shall deliver possession accordingly, and shall make the necessary entry in the Registers ;

or if, in the opinion of the Collector, the dispute be one which can more properly be determined by a Civil Court, the Collector shall refer the matter in dispute to the principal Civil Court of the district for determination as hereinafter provided.

Provided that if the applicant's possession of any extent of interest in accordance with his application be not disputed, or if such possession be proved to the satisfaction of the Collector, the Collector may register the said applicant's name in respect of such extent of interest, and may at the same time make a reference as hereinafter provided to the Civil Court for determination of any dispute as to any further extent of interest in respect of which the applicant has applied to be registered but in respect of which the right of the applicant to be registered is disputed, and is not proved to the satisfaction of the Collector.

As amended by Act V of 1878. B. C.

It has been held by the High Court that registration of land under Act VII. 1876, B. C., is not only not conclusive proof, but no evidence at all upon the question of title of a proprietor so registered. Such registration does not relieve a plaintiff from the *onus* of proving his title to land claimed by him. *Quære*.—Whether, in a suit founded upon possession alone, or in which the relief sought depends solely upon possession,

such registration ought not to be treated as *primâ facie* evidence of actual possession at the date when the registration was effected.—I. L. R., 8 Calc.. 853.

A Collector has, in some cases, to determine the *right* to possession. It appears a pity, in the light of this ruling, that Deputy Collectors should spend much time on contested cases, seeing that the result of their decision *quoad* title is *nil*. The Judges in this case were Garth, C.J., and White, J. It has since been ruled by Prinsep and O'Kinealy, J.J., that if the loser in such a contested case brings a suit for the recovery of possession, it lies on him in the first instance to make out a *primâ facie* case.—I. L. R., 8 Calc.. 923.

56. In any case of disputed possession of, succession to, or acquisition by transfer of, the extent of any interest in respect of which application is made under the last preceding section, the Collector may appoint a receiver to collect the rents of the extent of interest in dispute, and from the sums so collected shall be paid the expenses of management and the revenue due to the Government; and the surplus shall be held in deposit in the Collector's treasury, and shall be paid over to the person who shall be registered by the Collector, or under the order of a Civil Court, in respect of the extent of interest in dispute.

57. Every order of a Collector passed under the first clause of section fifty-five shall be of the same force and effect as an order passed by the Judge under section 4 of Act XIX of 1841 (*an Act for the protection of moveable and immoveable property against wrongful possession in cases of succession*), determining summarily the right to possession and delivering possession accordingly;

and no proceedings shall be taken by any Civil Court under the said Act in respect of any claim or dispute which has been determined by an order of the Collector as aforesaid.

58. In making a reference to the Civil Court under section fifty-five, the Collector shall state, for the information of the said Court, in writing under his hand,

(1) the name of the estate or revenue-free property to which the reference applies, together with the numbers which it bears on the General Register and (if an estate) on the Revenue-roll of the district;

(2) the names of all the persons who now stand registered on the General Register as proprietors, managers, or mortgagees of such estate or property, with the character and extent of the interest in respect of which each stands registered ;

(3) the name of the applicant for registry ;

(4) the character and extent of the interest in dispute ;

(5) the circumstances of the case as far as they are before the Collector, and the reasons which have led him to make the reference.

59. On receipt of such reference the said principal Civil

Procedure on receipt
of reference.

Court of the district may either proceed to determine the matter, or may transfer the matter for determination

to any other competent Civil Court in the district. The said principal Civil Court, or the Court to which the matter is transferred, shall cite the parties concerned, and give notice of the time at which the matter will be heard ; and, after expiration of the time so fixed, shall determine summarily the right to possession in respect of the interest in dispute (subject to regular suit), and shall deliver possession accordingly.

60. If it shall appear to the Judge of the Court by

Judge may appoint
curator.

which the matter is heard that danger is to be apprehended of the misappropriation or waste of the property

before the summary suit can be determined, such Judge may appoint curators for the care of the property, and may exercise all or any of the powers mentioned in sections 5 to 13 (both inclusive) of Act XIX of 1841.

61. The said Court may make such order as it shall

Costs.

think fit with regard to the payment by the parties of the cost of the inquiry and proceedings.

Provided that no costs shall be recoverable from the parties on account of the issue of notices citing the parties and fixing a date for the first hearing of the case.

62. The summary decision of the Court under section

Summary decision of
Court to be final.

fifty-nine shall have no other effect than that of settling the actual possession ; but for this purpose it shall be

final, not subject to any appeal or order for review.

63. The Court shall certify to the Collector its determination as to the right of possession, and the Collector shall thereupon make the necessary entries in the proper Registers.

64. Fees at the following rates shall be levied by the Collector on the registry under this Act of any transfer—

(1) In the case of revenue-paying lands, one quarter or four annas per centum on the annual revenue payable to Government from the extent of interest transferred ;

(2) in the case of revenue-free lands, two and a half per centum on the amount of the annual produce of the extent of interest transferred, such annual produce being the amount of the rents received and receivable on account of the year preceding the year in which the transfer may be registered ; provided that no fee for the registry of any one transfer shall exceed one hundred rupees.

Such fees shall be levied from the person in whose favour the transfer is registered.

All fees levied under this section shall be carried to the account of Government.

65. Whoever, being required by this Act to apply for the registration of his name and the extent of his interest in any estate or revenue-free property, voluntarily or negligently omits to make such application within the prescribed time, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees for such omission, and to such further daily fine as the Collector may think fit to impose, not exceeding fifty rupees, for each day during which such person shall omit to apply for such registration after a date to be fixed by the Collector in a notice requiring such person to apply for registration.

Such notice shall be served in the manner prescribed in section fifty, and the date before which such person is required to apply for registration shall not be less than one month after service of such notice.

66. The Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

67. Notwithstanding anything contained in section sixty-five, no fine shall be imposed by the Collector under the said section on any person on the ground that such person has failed to make application for registration of his name within the time fixed by the Lieutenant-Governor under section thirty-nine or forty,

or on the ground that such person has failed to apply for registration of his name within the time prescribed by section forty-two,

if such person shall, at any time after the expiration of the time fixed or prescribed as aforesaid, of his own motion, and otherwise than after the issue of a requisition by the Collector in that behalf, present such application as is required by this Act for the registration of his name, and of the character and extent of his interest.

68. Save as is provided in section 90 of the Code of Criminal Procedure, all the recorded proprietors and managers of an estate or revenue - free property shall be deemed to be jointly and severally liable for the discharge of any duties and obligations which are by any law for the time being in force imposed upon the proprietors of such estate or property ;

and all persons who are required by this Act to apply for registration shall, from the date on which the obligation so to register is imposed on them respectively by this Act, be deemed to be liable for the discharge of any duties and obligations which are by any such law as aforesaid imposed upon the proprietors of the estate or property in respect of which they are required to apply for registration respectively.

PART V.

OF THE OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

69. Notwithstanding anything contained in Act XI of 1859 (*an Act to improve the law relating to sales of land, &c.*), from the commencement of this Act no separate account shall be opened under the provisions of section 10 or of section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

No separate account to be opened otherwise than in accordance with registered interest.

70. When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the Government revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest. On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859.

Proprietor holding undivided interest in specific lands may apply for separate account.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

71. Section 12 of the said Act XI of 1859 shall apply to every application made under the last preceding section; and the effect and consequences of opening a separate account under the last preceding section shall be such and the same as are described in section 13 and in section 14 of Act XI of 1859.

72. Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act XI of 1859, or under section seventy, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers, any proprietor or manager whose name is borne on the General Register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager, or jointly by two or more recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate, and praying that the separate account standing open in respect of such share shall be closed, and, if he so desire, praying that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

In a certain estate separate accounts have been opened under section 10 of Act XI of 1859 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D, and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share, which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows:—

X	...	...	...	...	9 annas.
B	...	...	...	...	3 „
D & E	...	...	...	...	4 „

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share,

and also the separate account which is open in respect of B's 5 annas share, as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate :

and in the same application X may apply for the opening of a separate account in respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

73. On receipt of such application the Collector shall

Separate account may be closed and another opened. cause a copy of the same to be published in the manner provided in section 10 of Act XI of 1859 ; and if

within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him, under section 10 or section 11 of Act XI of 1859, or under section seventy, as the case may be.

74. If any recorded proprietor of the estate, whether

Procedure in case of objection. the same be held in common tenancy or otherwise, object that the share in respect of which any separate account

is open as aforesaid has not been broken up, and does still correspond with the character and extent of interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate,) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof,

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

PART VI.

MISCELLANEOUS.

75. The Collector shall supply an extract from any Register mentioned in this Act to any person who may apply for the same, subject to the payment of such fees for searching and copying as may be prescribed by the Board.

Collector must furnish extract from Register.

76. If in any district any Register prescribed by this Act has not been prepared and kept up in the vernacular language and character of the district, the Collector shall be bound, together with any English extract which may be furnished under the last preceding section, to furnish a translation of the same in the vernacular language and written in the vernacular character of such district to any one who may demand such translation, and no further charge shall be made in respect of the furnishing of such translation than might have been charged in respect of the English extract furnished under the said section.

Collector must furnish translation of extract.

77. Whenever any change shall be made by order of competent authority in the names of the recorded proprietors or managers of any estate or revenue-free property, or in the character or extent of the interest of any such proprietor or manager as entered in any Register mentioned in this Act, so soon as the order under which such change in the entry may have been made shall have been confirmed on appeal, or so soon as the period for presenting an appeal against such order shall have expired without the presentation of an appeal, the Collector shall cause a notice of such change to be posted up at his office, at the office of every Subdivisional Officer within whose jurisdiction any lands of the estate or revenue-free property concerned are situated, and at such places as he may think fit on the estate or property; and every such notice shall set out the name of every proprietor and manager of the estate or revenue-free property concerned, and the character and extent of the interest of every such proprietor and manager as it stands recorded on the General Register on the date of the issue of the notice.

Changes in names of proprietors, &c., and extent of interest to be notified on estate.

78. No person shall be bound to pay rent to any person

No person bound to pay rent in excess of recorded interest of claimant.

claiming such rent as proprietor, or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his

name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

and no person being liable to pay rent to two or more such proprietors, managers or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property.

79. The receipt of any proprietor, manager, or mort-

Indemnity to persons paying rent to registered proprietor, manager, or mortgagee.

gagee whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

80. Whenever any sum of money shall be payable by

Collector may pay certain sums due to recorded proprietors in accordance with registered interests of each.

the Collector to the proprietors of any estate or revenue-free property jointly (otherwise than under the Land Acquisition Act, 1870), the Collector may

pay to any one or more recorded proprietors or managers thereof respectively such portion of the said sum as may be proportionate to the extent of the interest in respect of which such proprietor or manager is registered, and the receipt of such proprietor or manager shall afford full indemnity to the Collector in respect of any sum so paid.

81. Nothing contained in the three last preceding sec-

Saving of written contracts and recovery from person receiving money.

tions shall be held to interfere with the conditions of any written contract, or to prevent any person deeming himself entitled to any sum of money

from recovering such sum by due process of law from any other person who has received the same.

Every amount due deemed to be a demand under Bengal Act VII of 1868.

82. Every amount which may become due to the Collector under the provisions of this Act in respect of

any expenses incurred, of any fees payable, of any notices served, of any costs payable by any party, or of any fines imposed, shall be deemed to be a demand under section 1 of Bengal Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue*), and shall be leviable as such.

83. The Collector may by a notice require the proprietor or manager of any estate or revenue-free property to name such estate or property by a distinctive name, and in case of failure of such proprietor or manager to comply with the requisition within the time fixed by the Collector, may name such estate or property.

84. The Collector may, by a special or a general order, delegate to any Assistant Collector, Deputy Collector, or Sub-Deputy Collector, the performance of any duty, and the exercise of any function, which the Collector is required or empowered to perform or exercise under this Act except in respect of appeals;

And any Assistant, Deputy, or Sub-Deputy Collector to whom any duty or function is so delegated may exercise all the powers of a Collector under this Act, except in respect of appeals.

85. Every order passed under this Act by any revenue officer below the rank of the Collector of the district (not being an officer specially vested with appellate powers as hereinafter mentioned) shall be appealable to the Collector of the district, or to any officer who may have been specially vested by the Government with special appellate powers in this behalf,

and there shall be no further appeal from any order so passed in appeal confirming the order appealed against,

but an appeal shall lie to the Commissioner of the Division against every order so passed in appeal which modifies or reverses the order appealed against.

Every order passed by the Collector of the district, or by any officer specially vested with appellate powers as aforesaid, being passed otherwise than on appeal from the order of another officer, shall be appealable to the Commissioner of the Division.

Every appeal to the Collector shall be presented within fifteen days of the date of the order appealed against ;

and every appeal to the Commissioner shall be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the order appealed against ;

and every appeal presented after the lapse of the time fixed by this section may be summarily rejected, unless sufficient cause shall be shown to the satisfaction of the appellate authority for admitting the appeal after the lapse of such time.

Every order passed by any officer subordinate to a Commissioner shall be subject at any time to revision and modification by such Commissioner ;

and every order passed by any such officer or by such Commissioner shall be subject at any time to revision and modification by the Board.

86. In computing the period of limitation prescribed for an appeal, the day on which the order complained of was made, and the time requisite for obtaining a copy of the same, shall be excluded.

87. The Lieutenant-Governor may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act ; and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

88. Within four months of the date on which this Act comes into force, the Board shall make certain rules. general rules consistent with this Act to regulate—

the form in which Registers under this Act are to be kept ;
the procedure as to the presentation, admission, and verification of applications for registration under Part IV, and as to inquiries under section fifty-two,
and generally for the purposes of this Act.

The Board may from time to time cancel or alter any such rules.

89. Nothing contained in this Act, and nothing done in accordance with this Act, shall be deemed to

Saving clause.

(a) preclude any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which he may deem himself entitled ;

(b) render the entry of any land in the Registers under this Act as revenue-free an admission on the part of Government of the right of the person in whose name such land may be entered, or an admission of the validity of the title under which the said land is held revenue-free ;

(c) affect the rights of the Government or of any person in respect of any immovable property or of any interest, except as otherwise expressly provided herein.

SCHEDULE OF REGULATIONS REPEALED.

See Section 2.

Number and year.	Subject or abbreviated title.	Extent of repeal.
XIX of 1793 ...	Non-badshahi lakhiraj grants.	Sections twenty-one, twenty-two, twenty-nine to thirty-four : sections thirty-six to forty-one ; so much of sections forty-two and forty-three as have not been repealed ; sections forty-four to forty-six, all inclusive.
XXXVII of 1793...	Badshahi lakhiraj grants.	Sections sixteen to eighteen, twenty-four, twenty-six to twenty-nine, thirty-one to thirty-three, thirty-five, thirty-six, so much of section thirty-seven as has not been repealed, section thirty-eight, so much of section thirty-nine as has not been repealed, sections forty to forty-one, all inclusive.
XLVIII of 1793 ...	A Regulation forming a quinquennial register, &c.	So much as has not been repealed.
LVIII of 1795 ...	Granting to the Collectors a commission on the jumma of certain lands.	So much as has not been repealed.
XV of 1797 ...	Levying fees, &c. ...	The whole.
VIII of 1800 ...	Pergunnah register ...	So much as has not been repealed, except section nineteen.

PART XII.

Legal Practitioners.

ACT No. XVIII OF 1879.

[As amended by Act XXI of 1883.]

*An Act to consolidate and amend the law relating to
Legal Practitioners.*

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

Preamble.

CHAPTER I.—*Preliminary.*

1. This Act may be called “The Legal Practitioners Act, 1879;” and shall come into force on the first day of January, 1880.

Short title.

Commencement.

Local extent.

This section and section two extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names Saving of rules, &c. enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or References to repealed enactments. notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

‘Judge’ means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

‘Subordinate Court’ means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865 :

‘Revenue-office’ includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

‘Legal practitioner’ means an Advocate, Vakíl or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

CHAPTER II.—*Of Advocates, Vakils and Attorneys.*

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of Advocates and Vakíls. any High Court under the Letters Patent constituting such Court, or under s. 41 of this Act, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless to the rules in force relating to the language in which the Court

or office is to be addressed by Pleaders or Revenue-agents ; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office :

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

As amended by Act XXI of 1883.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any Revenue-office.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an Attorney so practising.

CHAPTER III.—*Of Pleaders and Mukhtárs.*

Power to make rules as to qualification. &c., of Pleaders and Mukhtárs.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of

the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(b) the qualifications, admission, and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such Pleaders and Mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

7. On the admission, under section six, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person authorizing him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every Pleader holding a certificate issued under section seven may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue-Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead, and act in such Court or office and in any Court or Revenue-office subordinate thereto.

9. Every Mukhtár holding a certificate issued under section seven may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a Mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead and act in any such Criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section seven and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section nine in any Munsif's Court in the said territories, and on being so enrolled may appear, plead, and act in such Court in suits under Bengal Act No. VIII of 1869 (*to amend the procedure in suits between Landlord and Tenant*) or under any

other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Per White and Mitter, J.J.—The mere fact that a person looks after an appeal and gives instructions to Pleaders in connection with such appeal, does not show that such person was practising as a Mukhtár.

Per Garth, C. J.—Where a person is in the habit of acting for persons in Courts of Law, and holds himself out as ready to perform what is usually considered Mukhtár's work, for reward, such person is no less acting as a Mukhtár on any particular occasion, because he may have abstained on the particular occasion from doing any of those acts which a duly qualified Mukhtár is alone legally capable of performing.—I. L. R., 6 Cal., 585.

The mere writing of a petition for a party, who afterwards presents that petition himself, is not acting as a Mukhtár.—9 B. L. R., 18, App.

In the case of *Gojraj Singh*, Jackson, J., said:—"There is nothing in the provisions of Act XX of 1865 which restrains any persons from coming into the presence of the Judge and supplying information to the Vakils."—10 W. R., 355.

In the case of *Huzl Ali*, a man was fined for having "instructed the Vakil, stood behind him during the trial, suggested questions, and taken an active part in the management of the defence." Phear and Ainslie, J.J., in remitting the fine, said:—"We think the word 'act' means the doing something as the agent of the principal party which shall be recognized, or taken notice of, by the Court as the act of the principal, such as, for instance, the filing of a document.--19 W. R., Cr., 8.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section seven who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any Pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party,

or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Provided that, in any case in which the party on whose behalf any such Pleader as aforesaid is retained, is—

(a) a pardanashin woman, or

(b) unable, for any sufficient cause, to instruct the Pleader in person,

the High Court shall not suspend or dismiss the Pleader because he has taken instructions from a relative of the party deputed by him or her to instruct the Pleader.

The proviso is added by Act XXI of 1883.

“Or for any other reasonable cause.” A Mukhtár in the Midnapore district was committed for dacoity, but was acquitted by the Judge for want of evidence. The assessors considered the man guilty, but the Judge gave him the benefit of the doubt. The High Court were inclined to think he had instigated the dacoity, and ordered his name to be struck off the roll of Mukhtárs. The Court remarked:—“We may look, if necessary, behind a verdict of acquittal, and see if the circumstances, under which that acquittal was come to, do not, except as regards a fresh trial, practically annul any such declaration of Ghulab Khan’s innocence, as a verdict of not guilty might ordinarily be supposed to give. We ought not to be bound to consider him a blameless man, merely because he has been released under very peculiar circumstances from a criminal charge.”—7 B. L. R., 179.

A, a pleader, was engaged by B, who was acting on behalf of C, to defend certain persons charged with the offences of rioting and of having caused grievous hurt. Two of the accused persons were relatives of C. A agreed with B that, if all the accused were acquitted, his fee was to be Rs. 500; if the two relatives of C were acquitted, then he was to receive Rs. 250; but in the event of none of the accused being acquitted, he was to receive only Rs. 40. Before the trial B paid A Rs. 475: this having come to the knowledge of C, he telegraphed, saying that the fee was exorbitant, and A, upon being remonstrated with, handed over Rs. 250 to a banker to be placed to his (A’s) credit. A alleged that out of Rs. 225 which remained with him, he paid Rs. 140 to B as commission, and that Rs. 25 was paid to his Mohurir. *Held*, that A was guilty of fraudulent and grossly improper conduct. He was suspended from practising for the period of one year.

Per Pontifex, J.—If a Mukhtár, paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage on commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer.—11 B. L. R., 312.

It was considered by the Madras High Court that the decision in *Kennedy v. Brown* (13 C. B. N. S., 677) governs all agreements made by members of the English Bar in that character.—I. L. R., 3 Mad., 138.

A Barrister cannot contract with a client as to his fees, and Pleaders are prohibited by a Circular Order (No. 129, 11th August, 1853) from enforcing a contract for fees.—*Ibid.*

In consonance with the principles laid down by the High Court of Calcutta in several decisions, the Lords of the Privy Council held that, although the law of champerty was not applicable to the mofussil, the Courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family affairs by an agreement between him and the real heirs that, if he should establish their claim, he should be entitled to a share of their estate; and that such an agreement could not be enforced, being something against good policy and justice, something tending to promote unnecessary litigation, and something that in legal sense is immoral.—2 Suth. P. C., 977.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.

office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding

officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the Pleader or Mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtár charged before him or it under this section.

Suspension pending investigation.

Every report made to the High Court under this section shall

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge ;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge ;

(c) when made by the Magistrate of the District, be made through the Sessions Judge ;

(d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-Authority, be made through such Revenue-Authorities as the Chief Controlling Revenue-Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue - Authority through whom or which it is made.

15. The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section fourteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications and admission of proper persons to be Mukhtárs practising on the Appellate Side of such Court ;

(b) the fees to be paid for the examination and admission of such persons ;

(c) the security which they may be required to give for their honesty and good conduct ;

(d) the suspension and dismissal of such Mukhtárs ; and

(e) declaring what shall be deemed to be their functions, powers, and duties ;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees ; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-agents.*

Power to make rules as to qualifications, &c., of Revenue-agents. 17. The Chief Controlling Revenue-Authority may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications, admission, and certificates of proper persons to be Revenue-agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such Revenue-agents; and

(d) declaring what shall be deemed to be their functions, powers, and duties.

Publication of rules. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to Revenue-agents. 18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue-Authority shall cause a certificate signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-Authority.

Enrolment of Revenue-agent. 19. Every Revenue-agent holding a certificate issued under section eighteen may apply to be enrolled in any Revenue-office mentioned therein and situate within

the limits of the territory under the Chief Controlling Revenue-Authority; and, subject to such rules as the Chief Controlling Revenue-Authority may, from time to time, make in this behalf, the officer presiding in such office shall enroll him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

20. Except as provided by this Act or any other en-

No person to act as agent in Revenue-offices unless qualified. actment for the time being in force, no person, other than a Pleader duly qualified under the provisions here-

inbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section eighteen and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

21. The Chief Controlling Revenue - Authority may

Dismissal of Revenue-agent convicted of criminal offence. suspend or dismiss any Revenue-agent holding a certificate issued under this

Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

22. The Chief Controlling Revenue-Authority may

Dismissal of Revenue-agent guilty of unprofessional conduct. also, after making such enquiry as it thinks fit, suspend or dismiss any

Revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

23. If any Revenue-agent holding a certificate issued

Procedure when Revenue-agent is so charged in subordinate office. under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-Authority, or in the Court of

any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-Authority ; and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-Authority, suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue-Authority, in any

Power to Chief Controlling Revenue Authority to call for record.	case in which a Revenue-agent has been acquitted under section twenty-three otherwise than by an order of the Chief Controlling Revenue
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Authority, may call for the record and pass such order thereon as seems fit.	
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CHAPTER V.—*Of Certificates.*

25. Every certificate, whether original or renewed,

Fee for certificates.	issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed :
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Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-Authority [as the case may be] orders him to deliver the same.

CHAPTER VI.—*Of the Remuneration of Pleaders, Mukhtárs, and Revenue-agents.*

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Mukhtár, or Attorney upon all proceedings (a) on the Appellate Side of such Court, (b) in the case of a High Court not established by Royal Charter, on its Original Side, and (c) in subordinate Courts.

The Chief Controlling Revenue-Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Attorney, Mukhtár, or Revenue-agent,

Tables of the fees so fixed shall be published in the local official Gazette.

Nothing in this section applies to the agents mentioned in the proviso to section twenty.

28. No agreement entered into by any Pleader, Mukhtár, or Revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such Pleader, Mukhtár,

or Revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

30. Such an agreement shall exclude any further claim of the Pleader, Mukhtár, or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the Pleader, Mukhtár, or Revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtár, or Revenue-agent, shall be wholly void.

CHAPTER VII.—*Penalties.*

32. Any person who practises in any Court or Revenue-office in contravention of the provisions of section ten or section twenty shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for,

or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtár, or Revenue-agent whilst he has been contravening the provisions of either of such sections.

A Pleader or Mukhtár practising in contravention of the provisions of s. 10 of Act XVIII of 1879 is punishable under s. 32 only by the Court before which he has so practised.—I. L. R., 4 All., 375.

Quære—Whether an application by a person holding a general power-of-attorney, but no certificate, for a copy of the judgment in a suit in which neither himself nor his employer is a party, amounts to practising as a mukhtár so as to render the applicant liable to a fine, supposing the application to have been made for and on behalf of the employer? Strangers to a suit may obtain, as of course, copies of judgments, decrees or orders, at any time after they have been passed or made.—2 C. L. R., 553.

33. Any Pleader, Mukhtár, or Revenue-agent failing to deliver up his certificate as required by section twenty-six shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any Pleader, Mukhtár, or Revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtár, or Revenue-agent in any Court or Revenue-office, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section thirty-two, thirty-three, or thirty-four shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-Authority where the order has been passed by an officer subordinate to such Authority.

Penalty for receiving or giving commission. 36. Whoever commits any of the following offences:—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;

(b) retains any gratification out of remuneration paid or delivered or agreed to be paid or delivered to any legal practitioner for such employment;

(c) being a legal practitioner, tenders, gives or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.—*Miscellaneous.*

37. To facilitate the ascertainment of the qualifications mentioned in sections six and seventeen respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38. Except as provided by sections four, five, sixteen, twenty-seven, thirty-two, and thirty-six, nothing in this Act applies to Advocates, Vakíls and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtárs practising in such Court, or to Advocates enrolled by the Chief Court of the Panjáb.

39. When any person who holds a certificate as a Mukhtár under section seven and a certificate as a Revenue-agent under section eighteen is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

40. Notwithstanding anything hereinbefore contained, no Pleader, Mukhtár, or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be Advocates of the Court, and, subject to such rules, may enrol such and so many Advocates as it thinks fit.

(2) Every Advocate so enrolled shall be entitled to appear for the suitors of the Court and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any Advocate so enrolled or suspend him from practice :

(4) Provided that an Advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Panjáb, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

As amended by Act XXI of 1883.

42. Act I of 1846 (*for amending the law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to Pleaders in the Courts of the East India Company*) are repealed.

Added by Act XXI of 1883.

SCHED. I.—ENACTMENTS REPEALED.—*(See section 2.)*

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue - Agents Act, 1865.	So much as has not been repealed.
Act IX of 1866 ...	To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs, and Revenue-Agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-Agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877...	The Panjáb Courts Act, 1877.	Sections forty-two, forty-three, forty-four and forty-five.

SCHED. II.—VALUE OF STAMPS FOR CERTIFICATES.—*(See section 25.)*

I.—For a certificate authorizing the holder to practise as a Pleader—

(a) In the High Court and any subordinate Court—rupees fifty :

(b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(c) In all other subordinate Courts—rupees twenty-five :

(d) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :

(e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned— rupees five.

II.—For a certificate authorizing the holder to practise as a Mukhtár—

(f) In the High Court and any subordinate Court—rupees twenty-five:

(g) In any Court of Small Causes in a Presidency-town—rupees fifteen:

(h) In all other subordinate Courts—rupees fifteen :

(i) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten :

(j) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.—For a certificate authorizing the holder to practise as a Revenue-agent—

(k) In the office of the Chief Controlling Revenue-Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :

(l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :

(m) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

PART XIII.

License.

ACT No. II (B.C.) OF 1880.

An Act to amend the Law for Licensing Trades, Dealings, and Industries.

WHEREAS it is expedient to amend the law for licensing trades, dealings, and industries within the territories administered by the Lieutenant-Governor of Bengal: It is hereby enacted as follows :—

Short title.

1. This Act may be called “The Bengal License Act, 1880;”

It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal; and it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Extent and commencement.

2. Bengal Act I of 1878 is hereby repealed, but this repeal shall not affect any moneys due, penalties incurred, or proceedings instituted before the commencement of this Act.

Repeal of Bengal Act I of 1878.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

‘Collector.’ ‘Collector’ means the Chief Officer in charge of the revenue administration of a district;

and within the local limits of the ordinary original jurisdiction of the High Court at Fort William in Bengal, such officer as the Lieutenant-Governor of Bengal may from time to time appoint in this behalf;

For the purposes of this Act the local limits of the ordinary original jurisdiction of the High Court at Fort William in Bengal shall be deemed to be a district:

‘Section.’ ‘Section’ means a section of this Act:

‘Year’ means the period of twelve months commencing on the 1st day of April and ending on the 31st day of March next ensuing.

4. Nothing in this Act shall be deemed to affect the Saving of Bengal Act IV, 1876. tax on professions, trades, and callings imposed for municipal purposes by Bengal Act IV of 1876.

5. In this Act the words ‘trade,’ ‘dealing,’ or ‘industry’ shall not be deemed to include the following, that is to say:—

- (a) agriculture;
- (b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;
- (c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce.

6. Every person who, on or after the first day of April 1880, carries on (whether on to be behalf of himself or any other person) his trade, dealing, or industry in any district situate in the territories administered by the Lieutenant-Governor of Bengal, shall take out a license under this Act in such district, and shall pay for the same the annual fee specified in the Schedule hereto annexed as payable by persons of the class to which he belongs:

Provided that no person whose annual earnings from his trade, dealing, or industry carried on within the said territories are less than five hundred rupees shall be required to take out a license under this Act :

Provided further that, if such person carries on such trade, dealing, or industry in more than one such district, he shall take out such license in the district in which his principal place of business in the said territories is situate.

When any question arises as to what shall, for the purpose of this Act, be deemed to be the principal place of any business, the Lieutenant-Governor of Bengal, or such authority as the Lieutenant-Governor may from time to time appoint in this behalf, shall decide such question, and his or its decision thereof shall be final.

7. Such license shall be granted by the Collector of such district, and shall be signed by him or by such officer as he may appoint in this behalf.

Particulars to be specified in the license.

8. Every such license shall specify—

(a) the date of the grant thereof ;

(b) the name, father's name, residence, caste, if any, and the trade, dealing, or industry of the licensee ;

(c) the fee paid for the license ;

(d) the place or places within the said territories at which the licensee intends to carry on his trade, dealing, or industry ;

(e) the year for which such license is granted ;

and shall be received in evidence as *primâ facie* proof of all matters contained therein.

9. Every such license shall have effect throughout the said territories, and shall continue in force throughout the year for which it is granted.

Commencement and expiration of license.

10. Every person to whom any such license has been granted, and who desires to continue to carry on his trade, dealing, or industry in the said territories after the expiration thereof, shall take out a fresh license for that purpose for the following year, and shall renew the same so long as he desires to carry on such trade, dealing, or industry.

Renewal of license.

11. As soon as may be after the commencement of this Act, and the 1st day of January in every subsequent year, the Collector shall prepare a list of the persons in his district to be licensed under this Act. Such list shall state—

(a) the trade, dealing, or industry of each of the persons therein named ;

(b) the class under which he is charged ; and

(c) the fee to be paid for his license.

Such list shall be in such language as the Lieutenant-Governor may direct, but a copy thereof in the language of the district shall be filed in the office of the Collector, and shall be open to inspection at all reasonable times without any payment.

The Lieutenant-Governor of Bengal shall have power to declare what shall, for the purposes of this Act, be deemed to be the language of the district.

12. The Collector may, by a notice in writing, require the occupier of any house to forward to him a statement in writing, signed by such occupier, of the names of all persons residing in such house, and of their respective trades, dealings, or industries.

13. The Collector shall from time to time determine under which of the classes mentioned in the schedule hereto annexed every person required to take out a license under this Act shall be charged, and shall prepare or amend the said list accordingly.

14. A person or firm carrying on several trades, dealings, or industries shall be chargeable only under one of the classes in the said schedule with reference to his or its total annual earnings from all such trades, dealings, or industries. In the case of a firm, payment on account of the partnership by any one of the partners shall, for the purposes of this Act, be considered payment by the firm.

15. The Collector may, subject to such rules as the Lieutenant-Governor of Bengal may lay down, remit the whole or any part of the fee payable under this Act by any person who may

carry on his trade, dealing, or industry for a portion of the year only.

16. The Collector shall publish at his cutcherry, and Collector to publish at all Moonsifs' cutcherries, sub-notification ; divisional offices, and police stations within his district, a notification setting forth the provisions of section 6 and the schedule hereto annexed, and directing that, if any person liable to take out a license under this Act, whether he is mentioned in the list referred to in section 11 or not, continues his trade, dealing, or industry in the said district, payment for such license must be made by him within sixty days of the date of the publication of the notification, and within sixty days next after the 1st day of April of each succeeding year.

17. Every person whose name is entered in the list mentioned in section 11 shall, as soon and to serve notices as may be after the preparation thereof, be served with a notice stating on licensees. under which class of the said schedule he is charged, and directing him to pay the fee payable by persons of that class.

Such notice may be served through the post or as the Collector may direct.

18. Any person objecting to the class in which he is charged, may, within thirty days after the service upon him of such notice, or within such further time as the Collector may in each case think fit, apply by petition to the Collector in order to establish his right to have his name transferred to another class, or altogether removed from the list referred to in section 11.

19. The Collector shall fix a day for the hearing of the petition, and on the day so fixed, or Hearing of petition. on such subsequent day as he may from time to time direct, shall hear the same and pass such order thereon as he thinks fit :

Provided that if, in the judgment of the Collector, the petitioner is able to show that the fee which has been charged exceeds two per centum upon his annual earnings in his trade, dealing, or industry, such excess shall, for the purpose of section 18, be deemed a valid ground of objection, and the Collector shall thereupon order the petitioner's

name to be transferred to another class, or to be altogether removed from the list.

20. There shall be no appeal from an order of a Collector under section 19; but where the

Appeals.

order is passed by any officer subordinate to a Collector, an appeal shall lie to the Collector, or to some officer specially empowered by the Lieutenant-Governor of Bengal in this behalf. Every petition of appeal under this section shall be accompanied by a copy of the order complained of, and be presented within fifteen days of the date of such order. In computing the said period of fifteen days, the day on which the order complained of was made, and the time requisite for obtaining a copy of the same, shall be deducted.

21. Subject to the control of the Lieutenant-Governor of Bengal, the Commissioner of Revenue of the Division, and within the

Power of revision.

local limits of the ordinary original jurisdiction aforesaid, such officer as the Lieutenant-Governor may from time to time appoint, may, in his discretion, on the application of any person deeming himself aggrieved by an order passed by the Collector under section 19 or 20, call for the record of the case, and pass such order thereon as he thinks fit.

22. The Collector may, for the purpose of enabling him to determine under which of the

Power to summon witnesses, &c.

said classes the petitioner should be charged, summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure:

Provided that the Collector shall not, in the course of any proceedings under this section, call for any evidence except at the instance of the petitioner, or in order to ascertain the correctness of facts alleged by him.

23. If, after expiry of the period mentioned in the notification published under section 16

Penalty for carrying on business without a license.

for payment of the amount specified therein, any person carries on his trade, dealing, or industry without having taken out a license as required by this Act, he shall be liable by

order of the Collector to pay a fine not exceeding thrice the amount payable by him in respect of such license, exclusive of the amount so payable; and on receipt of such payment the Collector shall grant him a license:

Provided that no person who has been served with a notice under section 17 shall be liable to penalty under this section until the expiry of thirty days from the date of the service upon him of such notice.

24. All sums due under section 23 and all fees payable under this Act, shall, where the amount exceeds fifty rupees, be recoverable either as if they were arrears of land-revenue, or by distress and sale of the moveable property of the person liable, at the discretion of the Collector. In all other cases they shall be recoverable by distress and sale of the moveable property of the person liable.

The provisions of sections 113, 114, 115, and 119 of Bengal Act V of 1876 shall apply, as far as possible, to warrants of distress and sale issued by the Collector under this section, and no tools or implements of trade or agriculture shall be distrained or sold under any such warrant.

25. No proceedings for the recovery of any fees or other sums due under this Act shall be commenced after the expiry of six months from the last day of the year in respect of which they are payable.

26. Every person holding a license under this Act shall produce and show such license when required so to do by an officer generally or specially empowered in writing by the Collector to make such requisition;

But no person shall be proceeded against for neglect or refusal to produce such license except at the instance of the Collector.

27. The Court of Wards and receivers and managers appointed by any Court in British India shall be chargeable under this Act in respect of any trade, dealing, or industry of which the income is officially in their possession or under their control.

28. When any trustee, guardian, curator, committee, or agent is charged under this Act in such capacity, or when the Court of Wards, or any receiver or manager appointed by any Court, is charged under this Act, every Court and person so charged may, from time to time, out of the money coming to its or his possession as such trustee, guardian, curator, committee, or agent, or as such Court of Wards, receiver, or manager, retain so much as is sufficient to pay the fee charged.

Every such person or Court is hereby indemnified for every retention and payment made in pursuance of this Act.

29. All or any of the powers and duties conferred and imposed by this Act on a Collector may, subject to the orders of the Collector of the district, be exercised and performed by any Assistant or Deputy Collector, or by such other officer as the Lieutenant-Governor of Bengal shall from time to time appoint in this behalf.

30. From the net amount of all fees and penalties paid or recovered under this Act, after deducting the expense of collection, so much as the Governor General in Council from time to time directs shall be applied, in such manner as the Governor General in Council thinks fit, for the purpose of increasing the revenues available for defraying expenditure incurred or to be incurred for the relief and prevention of famine in the territories administered by the Lieutenant-Governor of Bengal, or if the Governor General in Council so directs, in any other part of British India.

The residue (if any) of such net amount shall be carried to the credit of the Local Government of Bengal.

31. Every person shall be legally bound to furnish such information as may be required for the purposes of this Act to any officer or person exercising any of the powers of a Collector under this Act.

32. The Lieutenant-Governor of Bengal may from time to time (a) exempt from the operation of this Act any portion of the territories subject to him, or any

persons or class of persons in such territories, and may
b) make rules consistent with this Act—

(1) for defining more precisely the classes of persons liable under this Act;

(2) for regulating the time and manner of collecting the fees charged under this Act; and

(3) generally for the guidance of officers in all matters connected with the enforcement of this Act.

SCHEDULE.

Rs.

<i>Class I.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	500
<i>Class II.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	200
<i>Class III.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	100
<i>Class IV.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	50
<i>Class V.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	20
<i>Class VI.</i> —Every person carrying on any trade, dealing, or industry, who shall be adjudged by the Collector to be a licensee of this class	...	...	...	10

Rules for the Administration of the Bengal License Act, under Section 32 of Act II (B.C.) of 1880.

1. Every person carrying on any trade, dealing, or industry, whose annual earnings from such trade, dealing, or industry amount to Rs. 500 or upwards, must take out and pay for a license under this Act.

2. A person who carries on more than one trade, dealing, or industry is to be taxed, not separately on the profits from each trade, dealing, or industry, but on the collective net profits derived from all such trades, dealings, or industries.

3. When a person or firm carries on two or more trades, dealings, or industries coming under more than one designation, the assessment will be made with reference to the *total* profits from all such trades, dealings, or industries, but it is within the discretion of the Collector to determine under which particular designation the license will be granted.

4. A person who carries on his trade, dealing, or industry in more than one district need only take out a license in the district in which his principal place of business is situate. When any person liable

to assessment is known to carry on business in any other district, the Collector must communicate with the Collector of that other district in order to the formation of an estimate of the annual profits of such person and the determination of his principal place of business. In the event of any dispute arising regarding the district in which the principal place of business is situated, the Collectors will, if their districts are situated in the same division, refer the question for the decision of the Commissioner; otherwise they will apply direct to the Board for orders. Commissioners and the Board are hereby respectively empowered under section 6 of the Act to decide all such questions duly referred to them. The Lieutenant Governor is however pleased to declare as a general rule that the ordinary place of residence of the person assessed, and in the case of a firm the ordinary place of residence of the head acting partner, shall be held to be the principal place of business of such person or firm. Residence in the suburbs or neighbourhood of Calcutta shall, when the business is carried on in Calcutta, be taken to be residence in Calcutta.

5. In estimating the amount of profits derived from any trade, dealing, or industry, the expenses incurred in carrying on such trade, dealing, or industry must be excluded; but the amount expended on things not directly connected with it, such as the maintenance of the licensee or his family, must not be excluded, as such amounts form part of the taxable profits of the licensee.

Occupations exempt from assessment.

6. Under section 5 of the Act the following occupations are exempted from assessment:—

(1) agriculture;

(2) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

(3) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce.

All servants receiving fixed wages or paid by commission, or partly by wages and partly by commission, whether their duties are such as would ordinarily make them liable under the Act or not, including all mechanics and artisans paid by wages, are exempted from the operation of the Act.

7. Any agriculturist who (besides cultivating land) carries on any trade, dealing, or industry, which would, if it

General instructions as to classes liable under the Act.

formed his sole occupation, subject him to tax, must take out a license with reference to the amount of his earnings from such separate trade, dealing, or industry. Care must be taken in assessing such a person to discriminate between his earnings from his trade or industry and his earnings from his agriculture. Agricultural profits must not on any account be taxed. So, again, no zemindar or rent receiver is liable to tax in respect of his rents. But if he carry on the business of a mahajun or money-lender, he should be required to take out a license in respect of his business profits. There will ordinarily be little difficulty in distinguishing between the case of a zemindar who occasionally makes advances to his tenants with the object of assisting them, and the case of a zemindar who regularly carries on 'mahajuni' for his own profit. The former should on no account be taxed under this Act. The latter must take out a license.

Collectors should have little difficulty in deciding generally whether a man's occupation can be described as a 'trade, dealing or industry.' These words are intended only to cover all the operations of commerce, large or small.

8. In determining under which class of the schedule annexed to the Act a person is liable to be assessed, the Collector must endeavour so to regulate the incidence of the tax that the fee payable by any person shall not exceed per cent. upon his annual earnings. In the inquiry which is to be made into the amount of each licensee's income, the Collector should base his estimate on any information voluntarily given to him by the licensee, or on any other indirect evidence which may be available to him. It will be for the licensee to show that the rate of tax proposed is beyond the maximum to which he is liable under the Act.

9. The following table shows the minimum taxable income under each class :—

Table of fees.						Minimum taxable income.	Rate of tax.
CLASS.						Rs.	Rs.
I	...	...	...	...	...	25,000	500
II	...	...	...	...	...	10,000	200
III	...	...	...	...	...	5,000	100
IV	...	...	...	...	...	2,500	50
V	...	...	...	...	...	1,000	20
VI	...	...	...	...	...	500	10

10. In the assessment and collection of the tax the Collector of the district is subject to the control of the Commissioner and the Board of Revenue.

11. The Collector must retain in his own hands the general supervision of the operations under the Act; but he may, with the sanction of the Commissioner, entrust the immediate control and direction of the work to any qualified Assistant or Deputy Collector at head-quarters.

The sanction of Government is not necessary for the exercise and performance (subject to the Collector's orders) by an Assistant or Deputy Collector of any or all of the duties and powers conferred on a Collector under the Act. It is only necessary in the case when any other officer than those above named has been appointed for the purpose. Powers to hear appeals are given below.

12. One or more assessors will be appointed by Government in each district, if necessary, to conduct operations under the Act. No officer, while continuing to hold and to perform the duties of an appointment in the regular establishment of a Collector's office, should be employed to make or revise assessments under the Act, save with the previous sanction of Government, which should be obtained through the Commissioner and the Board.

13. No time should be lost in the publication of the notification under section 16 (Form B).

14. It will be necessary to examine the old assessments very carefully before entries are made in the first list framed under section 11, and notices served under section 17. As soon as the list has been prepared, each Collector will open a register in the English character in the form below, to be called "Register of Assesseees under the License Tax." The register will be divided into separate parts, one for each subdivision, and will contain an index. A copy of the part referring to each subdivision will be supplied to the Subdivisional Officer. Collectors and Subdivisional Officers should take every opportunity of checking their registers by personal enquiry. Errors of assessment should be at once rectified, if possible, and the district and subdivisional registers corrected accordingly.

Attention is directed to section 17 of the Act. Notices should be served in Form (D).

15. Whenever a person carries on his trade, dealing, or industry for a portion of the year less than six months, he may receive a remission of one-half of his license-fee on his satisfying the Collector of the district to that effect.

16. Officers of police of or above the rank of Sub-Inspector shall be deemed to be generally empowered to require any person holding a license to produce and show his license. But the Collector may, by an order in writing, generally or specially, empower any other persons to act in this behalf as he may think fit.

17. All fees under the Act must be paid in one sum, and not by instalments.

18. Payment of fees and other demands under the Act must be made at the district or subdivisional treasury.

19. On payment of the fee specified, the licensee will be entitled to receive a license under the Act, and this license shall be deemed to be a receipt for the fee so paid.

20. The license will be in the Form C, and will be printed on such paper, and bear such serial numbers as the Board may prescribe for each district. The forms of licenses for any particular year must be kept separate from the forms of licenses for a preceding year, and on no account should a license intended for one year be granted in a form intended for another year.

21. Whenever the amount of the tax, after being realized, is remitted or reduced on appeal, the license originally issued shall be returned to the Collector at the time the amount refunded is paid. The license should be cancelled, and the fact of cancellation should be noted on the counterfoil. In the case of reduction of the tax, a fresh license will be granted for the reduced sum, the balance due to the assessee being refunded to him; but in the accounts the full amount paid for the cancelled license will be treated as a refund, and the amount of the fresh license as a collection.

22. A petition of objection under section 18 of the Act may be filed within 30 days of the date of the service of the notice under section 17. The Collector may extend this period beyond 30 days, but such period should in no case, unless under very exceptional circumstances, be extended beyond 60 days.

23. No petition of objection should be received when more than 30 days have passed from the date of the service of the notice, unless the license-fee charged in the Collector's list is previously paid.

24. As soon as an order for refund has been passed on a petition of objection, payment of the amount should be made.

25. Assessors are not to be allowed any power of deciding objections against their own assessments, except under Classes V and VI in which cases an appeal will lie to the Subdivisional Officer. In districts where there are no subdivisions, or where the objector is assessed within

the sudder subdivision of the district, this appeal will lie to the Assistant or Deputy Collector in charge of License Tax duties at head-quarters.

26. Petitions of objection against assessments in the first four classes must be made to the Assistant or Deputy Collector in charge of the License Tax duties at head-quarters. The appeal from his decision will lie to the Collector of the district.

Objection in first four classes to be heard by Assistant or Deputy Collector.

27. The Subdivisional Officer, or the Deputy Collector in charge at head-quarters, shall forward to the Collector a list of those persons who have failed to make payment within 60 days from and after the service of notices under section 17. The Collector shall thereupon issue orders for the recovery of the license-fees and full penalty, unless for good and sufficient reasons the Collector sees fit to postpone the issue of orders in the case of any particular defaulter.

List of defaulters.

28. Whenever any person whose name is not mentioned in the list framed under section 11 of the Act applies to take out a license, he must be required to state, in writing or in reply to formally recorded interrogations (Form E), his name, and the trade, dealing, or industry, under which he is chargeable, and the maximum amount of fee which he considers himself liable to pay under the Act. Any person giving false information on these points is liable to the penalties prescribed by the Penal Code for such offence.

Application for license by person not included in the list.

29. The stamp-fee chargeable on every petition presented to a Collector under the provisions of sections 18 and 20 of the Act is one anna, and on every petition to a Commissioner under section 21, one rupee.

Stamp-fee.

30. The following registers prescribed by the Board should be kept up in each district. It shall be competent to the Board to add or alter these registers as they may think fit.

Registers to be kept up in each district.

Register I.—Register of petitions of objection presented under section 18 of the License Act in each district.

II.—Register of petitions of appeal presented under section 20 of the Act.

III.—Register showing the number of license forms issued to assessors.

IV.—Register showing the number of license forms in custody of, and issued by, district officers

V.—Register of licenses granted under section 7 of the License Act.

VI.—Register of number of licenses under the schedule of the Act in store in the treasury.

VII.—Register of operations.

VIII.—Register of notices.

IX.—Register of prosecutions under section 23 of the Act.

X.—Register of refunds of license tax.

XI.—Register of distraint and sales of property under section 24 of the Act.

XII.—Register of assessees.

PART XIV.

Limitation

ACT XV OF 1877.

(As amended by Act XXII of 1879.)

An Act for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to amend the law relating to
the limitation of suits, appeals, and
Preamble. certain applications to Courts; and
whereas it is also expedient to provide rules for acquiring
by possession the ownership of easements and other pro-
perty; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called “The
Indian Limitation Act, 1877.”

It extends to the whole of British India; but nothing
Extent of Act. contained in sections two and three
or in Parts II and III applies—

(a) to suits under the Indian Divorce Act, or

(b) to suits under Madras Regulation VI of 1831.

Commencement. It shall come into force on the first
day of October 1877.

2. On and from that day the Acts mentioned in the
first schedule hereto annexed shall
Repeals of Acts. be repealed to the extent therein
specified.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.

References to Act IX of 1871. Saving of titles already acquired.

Saving of Act IX of 1872, s. 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

3. In this Act, unless there be something repugnant in the subject or context—

‘plaintiff’ includes also any person from or through whom a plaintiff derives his right to sue; ‘applicant’ includes also any person from or through whom an applicant derives his right to apply; and ‘defendant’ includes also any person from or through whom a defendant derives liability to be sued:

‘easement’ includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, of anything growing in, or attached to, or subsisting upon, the land of another:

‘bill of exchange’ includes also a hundi and a cheque:

‘bond’ includes any instrument whereby a person obliges himself to pay money to another, on condition

that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

‘ promissory note ’ means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

‘ trustee ’ does not include a benámídar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

‘ suit ’ does not include an appeal or an application :

‘ registered ’ means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to at the context.

‘ foreign country ’ means any country other than British India ; and nothing shall be deemed to be done in ‘ good faith ’ which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted,

Dismissal of suits,
&c., instituted, &c.,
after period of limit-
ation.

appeal presented, and application made, after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dis-

missed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer ; in the case of a pauper when his application for leave to sue as a pauper is filed ; and in the case of a claim against a company which is being wound up by the Court, when claimant first sends in his claim to the official liquidator.

Illustrations.

(a.) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens :

Proviso where Court is closed when period expires.

Any appeal or application for review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Proviso as to appeals and applications for review.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Special and local laws of limitation.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Legal disability.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

Double and successive disabilities.

When his disabilities continue up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Disability of representative.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority within which he may bring his suit.

(c.) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.) A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f.) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Disability of one joint creditor.

trations.

(a.) A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b.) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it ;

Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration, for the purpose of following in his or their hands such property), shall be barred by any length of time.

Suits against express trustees and their representatives.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on foreign contracts.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

Foreign Limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made

in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

17. When a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section ‘signed’ means signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such.

Or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part-payment of principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Effect of substituting or adding new plaintiff or defendant.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff :

Proviso where original plaintiff dies.

Provided also, that when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Proviso where original defendant dies.

23. In the case of continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

Illustrations.

(a.) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b.) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

Illustrations.

(a.) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.) A Hindu makes a bond bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. When the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement and as of right, without interruption, and for twenty years,

Acquisition of right to easements.

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a.) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(b.) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed that right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

A person entitled to a right of way can only claim a reasonable exercise of his right. It is only ownership of the land that carries with it the ownership of everything *usque ad cælum*. 1 C. L. R., 425.

The Privy Council have held that the provisions of the Limitation Act, which is a remedial Act, and neither prohibitory nor exhaustive, do not exclude or interfere with the acquirement of rights otherwise than under the Act. A title may be acquired under the Act by a person having no other right at all; but it does not exclude or interfere with other titles and modes of acquiring easements. Long enjoyment should be referred to a legal origin; it gives rise to a presumption of a grant, or of an agreement between the predecessors of the parties creating an easement. I. L. R., 6 Cal., 374.

When limitation is pleaded in a suit to re-establish an easement, one of the issues should be, whether there is evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and duration as to justify the presumption of a grant or other legal origin of the plaintiff's right, independent of the provisions of s. 26, Act XV of 1877. I. L. R., 6 Cal., 812.

The word 'easement,' as used in the Limitation Act, has, by force of the interpretation clause (s. 3), a very much more extensive meaning than the word bears in the English law, for it includes any right not arising from contract by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing, or attached to, or subsisting upon the land of another. An easement, therefore, under the Indian law, embraces what in English law are called *profits à prendre*—rights to enjoy profits out of the lands of another.

Before water has reached a definite channel, be it surface or underground water, the party on whose land it happens to be may appropriate it to his own purposes, and if, in the performance of this legal act, incidental to the enjoyment of his own property, any loss accrues to another party, it is a *damnum absque injuria*, and no action will lie.

A prescriptive right of fishery is an 'easement' as defined by s. 3 of the Act, and may be claimed by any one who can prove a 'user' of it.—that is to say, that he has of right claimed and enjoyed it without interruption for a period of twenty years, although he does not allege, and cannot prove, that he is, or was, in the possession, enjoyment, or occupation of any dominant tenement.

The right of having the natural drainage of the country carried off over the lands of another, is a right recognized in this country, and all lands are of necessity burdened with the servitude of receiving and discharging all waters which naturally flow down to them from lands on a higher level; if the owner or occupier of lower lands interposes artificial impediments in the way of the natural flow of the water through or across his lands, and by so doing causes the higher lands to be flooded, he is responsible in damages for infringing the natural rights of the possessor of such higher lands to the natural outfall and drainage of the soil. S. D. A., 1860, p. 301; 1857, p. 1324. *Claremore v. Richards*, 7 H. L. C., 349.

In a case before the Sudder Dewany Adawlut in 1859, plaintiffs sued for the removal of a ferry recently established by defendants in the vicinity of their ferries, on the ground that their ferries were public within the meaning of Reg. VI. 1819, sec. 6, clause 1, and that the establishment of the new ferry had injured the collections at their ghâts. *Held*, that though the collections from the plaintiffs' ferries

were included in the assets of the zemindari when it was permanently settled, those ferries did not, in consequence, come within the meaning of Reg. VI of 1819, and that no action for damages could be brought, on the ground that the re-establishment of the new ferry was detrimental to the collections hitherto realized at the old. S. D. A., 1859, p. 629.

In this case it appeared that the defendants had established a new bazar in their own zemindari, and opened a ferry for the convenience of parties coming to it; and that one bank of the river belonged to them.

There can be no easement to fish in the sea, as such a right is a public right. The right to fish in the sea is not the subject of prescription, whereas easements may be prescribed for. *Ward v. Cresswell*, 5 Willes' Rep., 265. Nor, again, is it a *profit à prendre in alieno solo*. A private right of fishery over the soil of another is a *profit à prendre*. *Wickham v. Hawker*, 7 M. and W., 63. I. L. R., 2 Bom., 50.

See notes under Reg. VII, 1822. s. 14.

A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private right.

Quære.—Whether such right can be created at all?

A mere recital in quinquennial papers that a person is the owner of *jalkar* rights in a zemindari permanently settled with him by Government, is not sufficient to give to such person a right of fishery in a public navigable river; any right granted under such word "*jalkar*" would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a *jhil*. I. L. R., 4 Cal., 53.

It is not necessary that there should have been "actual user" within two years before the institution of the suit. It is sufficient if there has been "enjoyment." In the case of discontinuous easements, there may be *enjoyment of a right*, though for some time there may not be any *actual user or exercise* of it. Illustration (b) curtails a right which the section in its ordinary sense confers, and it must therefore be rejected. Illustrations ought never to be allowed to control the plain meaning of a section. I. L. R., 7 Cal., 132.

A right of passage for boats in the rainy season over a channel wholly in another man's land, is, in respect of extent, analogous to an ordinary right of way; and the dominant owner cannot complain of the servient owner's narrowing the channel, so long as the latter, by so doing, does not prevent the former from passing and repassing as conveniently as he has always been accustomed to do. I. L. R., 7 Cal., 145.

It being a recognized servitude of lower lands to receive the natural drainage of adjoining lands on a higher level, where it is established that, for a long series of years, the water of certain lands has been accustomed to escape in a particular direction and by certain separate passages into adjoining lower lands, the owners of the latter are not entitled to do anything to interfere to prevent the escape of the water in the manner described. 10 C. L. R., 396.

But no length of time will give the owner of the lower land a right to compel the owner of the higher land to send the water on; provided that the latter does not interfere with any portion of the water which flows from his land to that of the former in a natural and defined channel. The servient owner cannot prevent the dominant owner from putting an end to the servitude at any time he may think proper. 2 C. L. R., 141.

27. Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Exclusion in favour of reversioner of servient tenement.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years ; but B shows that, during ten of these years, C, a Hindu widow, had a life interest in the land, that on C's death, B become entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Secs. 26 and 27 of the Limitation Act have been repealed by s. 3 of Act V. 1882 (Easements Act) : but the Easements Act is in force only in Madras, the Central Provinces, and Coorg. Already Moonsiffs in Bengal consult the Act in easement cases, and probably the Act, which is concise and complete, will be extended to the whole of India. The common law is almost unascertainable, and it is surely better to have uniformity than that Moonsiffs should dip into English treatises and each apply his own ideas of the law.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

THE FIRST SCHEDULE.

(See section 2.)

Number and year of Acts.	Title.	Extent of repeal.
X of 1865 ...	The Indian Succession Act.	In section 321, the words " within two years after the death of the testator, or one year after the legacy has been paid."
IX of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the " words within thirty days from the date of the order."

THE SECOND SCHEDULE.

(See section 4.)

FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 <i>(to provide for the adjudication of claims to waste lands.)</i>	PART I. <i>Thirty days.</i> Thirty days ...	When notice of the award is delivered to the plaintiff.
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	PART II. <i>Ninety days.</i> Ninety days ...	When the act or omission takes place.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART III. <i>Six months.</i>		
3.—Under the Specific Relief Act, 1877, s. 9, to recover possession of immovable property.	Six months ...	When the dispossession occurs.
4.—Under Act No. IX of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers</i>), section one.	Ditto ...	When the wages, hire or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure. Chapter XXXIX (<i>Of Summary Procedure on Negotiable Instruments</i>).	Ditto ...	When the instrument sued upon becomes due and payable.
PART IV. <i>One year.</i>		
6.—Upon a Statute, Act, Regulation or By-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging.	Ditto ...	When the price becomes payable.

THE SECOND SCHEDULE.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	PART IV. <i>One year.</i> One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person against whom an order is passed under section 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	Ditto ...	The date of the order.
12.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue; (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (d) sale of a patni taluq sold for current arrears of rent.	Ditto ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
<i>Explanation.</i> —In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.		

THE SECOND SCHEDULE.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART IV. <i>One year.</i>		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year ...	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto ...	The date of the act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Ditto ...	When the attachment, lease or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto ...	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto ...	When the imprisonment ends.

THE SECOND SCHEDULE.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART IV.		
<i>One year.</i>		
20.—By executors, administrators or representatives under Act No. XII of 1855 (<i>to enable executors, administrators or representatives to sue and to be sued for certain wrongs</i>).	One year ...	The date of the death of the person wronged.
21.—By executors, administrators or representatives under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrongs</i>).	Ditto	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel.	Ditto	When the libel is published.
25.—For compensation for slander.	Ditto	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto	The date of the breach.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART IV. <i>One year.</i>		
28.—For compensation for an illegal, irregular or excessive distress.	One year ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
PART V. <i>Two years.</i>		
30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	When the perversion first becomes known to the person injured thereby.
33.—Under Act No XII of 1865 (<i>to enable executors, admnrs. or representatives to sue and to be sued for certain wrongs</i>) against an executor, admnr. or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife.	Ditto ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	<p>PART V. <i>Two years.</i> Two years ...</p>	When the malfeasance, misfeasance or nonfeasance takes place.
37.—For compensation for obstructing a way or a watercourse.	<p>PART VI. <i>Three years.</i> Three years ...</p>	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege	Ditto ...	The date of the infringement.
41.—To restrain waste.	Ditto ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Ditto ...	When the ward attains majority.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
<i>Three years.</i>		
45.—To contest an award under any of the following Regulations of the Bengal Code :—	Three years .	The date of the final award or order in the case.
VII of 1822, IX of 1825, and IX of 1833.		
46.—By a party bound by such award to recover any property comprised therein.	Ditto	Ditto ditto.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XL, or the Bombay Mámlátdars Courts Act, or by any one claiming, under such person, to recover the property comprised in such order.	Ditto	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion or for compensation for wrongfully taking or detaining the same.	Ditto	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VI.		
<i>Three years.</i>		
—For the hire of animals, vehicles, boats or household furniture.	Three years .	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant, where no fixed period of credit is agreed upon.	Ditto	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto	When the work is done.
57.—For money payable for money lent.	Ditto	When the loan is made.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
<i>Three years.</i>		
58.—Like suit when the lender has given a cheque for the money.	Three years .	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto	When the money is paid
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing, signed as aforesaid, made payable at a future time, and then when that time arrives.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
<i>Three years.</i>		
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years .	When the time specified arrives or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto	The day so specified.
67.—On a single bond where no such day is specified.	Ditto	The date of executing the bond.
68.—On a bond subject to a condition.	Ditto	When the condition is broken.
69.—On a bill of exchange for promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand	Ditto	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto	The date of the bill or note.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
<hr/>		
PART VI.		
<i>Three years.</i>		
74.—On a promissory note or bond payable by instalments.	Three years .	The expiration of the first term of payment, as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto	When the surety pays the creditor.

THE SECOND SCHEDULE.

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
<i>Three years.</i>		
82.—By a surety against a co-surety.	Three years ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damaged.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual open and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premia paid under a policy avoidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
PART VI.		
<i>Three years.</i>		
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Three years .	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto	When the facts entitling the plaintiff to have the instruments cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto	The date of the failure.

THE SECOND SCHEDULE.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VI. <i>Three years.</i>	
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.
101.—For a seaman's wages.	Ditto	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i> .)	Ditto	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>)	Ditto	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor re-enters on the mortgaged property.

THE SECOND SCHEDULE.—(

Description of suit.	Period of limitation.	Time from which period begins to run.
<div data-bbox="812 623 1043 677">PART VI.</div> <div data-bbox="806 692 1048 746"><i>Three years.</i></div>		
106.—For an account and a share of the profits of a dissolved partnership.	Three years ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
110.—For arrears of rent.	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.
113.—For specific performance of a contract.	Ditto ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
115. — For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	<p>PART VI. <i>Three years.</i></p> <p>Three years ...</p>	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
116.—For compensation for the breach of a contract in writing registered.	<p>PART VII. <i>Six years.</i></p> <p>Six years ...</p>	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Ditto ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid or never in fact took place.	Ditto ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto ...	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.
121.—To avoid incumbrances or undertenures in an entire estate sold for arrears of Government revenue, or in a <i>patni taluq</i> or other salable tenure sold for arrears of rent.	<p>PART VIII. <i>Twelve years.</i></p> <p>Twelve years ...</p>	When the sale becomes final and conclusive.

THE SECOND SCHEDULE —(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
122.—Upon a judgment obtained in British India, or a recognizance.	PART VIII. <i>Twelve years.</i> Twelve years ...	The date of the judgment or recognizance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto ...	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Ditto ...	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto ...	When the alienee takes possession of the property.

THE SECOND SCHEDULE.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>127.—By a person excluded from joint family property to enforce a right to share therein.</p> <p>128.—By a Hindu for arrears of maintenance.</p> <p>129.—By a Hindu for a declaration of his right to maintenance.</p> <p>130.—For the resumption or assessment of rent-free land.</p> <p>131.—To establish a periodically recurring right.</p> <p>132.—To enforce payment of money charged upon immoveable property.</p>		
<p><i>Explanation.</i>—The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.</p>		
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Ditto ...	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards	Ditto ...	Ditto.

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>purchased from the trustee or mortgagee for a valuable consideration.</p> <p>135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.</p> <p>136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.</p> <p>137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.</p> <p>138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.</p> <p>139.—By a landlord to recover possession from a tenant.</p>	<p>PART VIII.</p> <p><i>Twelve years.</i></p>	<p>When the mortgagor's right to possession determines.</p> <p>When the vendor is first entitled to possession.</p> <p>When the judgment-debtor is first entitled to possession.</p> <p>The date of the sale.</p> <p>When the tenancy is determined.</p>
	Twelve years ...	
	Ditto ...	
	Ditto ...	
	Ditto ...	
	Ditto ...	

THE SECOND SCHEDULE.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
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PART VIII.

Twelve years.

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| 140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property. | Twelve years ... | When his estate falls into possession. |
| 141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female. | Ditto | When the female dies. |
| 142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. | Ditto | The date of the dispossession or discontinuance. |
| 143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition. | Ditto | When the forfeiture is incurred or the condition is broken. |
| 144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for. | Ditto | When the possession of the defendant becomes adverse to the plaintiff. |

PART IX.

Thirty years.

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|---|------------------|----------------------------------|
| 145.—Against a depository or pawnee to recover moveable property deposited or pawned. | Thirty years ... | The date of the deposit or pawn. |
|---|------------------|----------------------------------|

THE SECOND SCHEDULE.—(Conti

Description of suit.	Period of limitation.	Time from which period begins to run.
PART IX.		
<i>Thirty years.</i>		
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years ...	When any part of the principal or interest was last paid on account of the mortgage debt.
PART X.		
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or recover possession of immoveable property mortgaged.	Ditto	When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day,
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person.

THE SECOND SCHEDULE.—(*Continued.*)

SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

THE SECOND SCHEDULE.—(Continued.)

THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure.	Ditto ...	When the summons is served.
160.—For an order under section 629 of the same Code restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.
*161.— <i>For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.</i>	Twenty days ...	When the payment or adjustment is made.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, in the exercise of its original jurisdiction.	Ditto ...	The date of the decree or order.
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.
164.—By a defendant for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.

THE SECOND SCHEDULE.—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days ...	The date of the dispossession.
*166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, <i>or on the ground that the decree-holder has purchased without the permission of the Court.</i>	Ditto ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto ...	The date of the resistance, obstruction or dispossession.
168.—For readmission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
169.—For a rehearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto ...	The date of the decree in appeal.

THE SECOND SCHEDULE.—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
170.—For leave to appeal as a pauper.	Thirty days ...	The date of the decree appealed against.
*171.—Under section 363 or 365 of the Code of Civil Procedure, by a person claiming to be the legal representative of a deceased plaintiff or appellant.	Sixty days ...	The date of the plaintiff's or appellant's death.
*171a.—Under s. 366 of the same Code, by the defendant.	Ditto ...	The date of the plaintiff's death.
*171b.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
*171c.—Under section 351 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal.
172.—By purchaser at an execution-sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto ...	The date of the sale.
173.—For a review of judgment, except in the cases provided for by No 162.	Ninety days ...	The date of the decree or order.
174.—By a creditor of an insolvent judgment-debtor or under s. 353 of the Code of Civil Procedure.	Ditto ...	The date of the publication of the schedule.

THE SECOND SCHEDULE.

Description of application.	Period of limitation.	Time from which period begins to run.
175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.
176.—Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court.	Ditto	The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto	The date of the decree appealed against.
178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years	When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.	Three years ; or where a certified copy of the decree or order has been registered, six years.	<ol style="list-style-type: none"> 1 The date of the decree or order, or 2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3 (where there has been a review of judgment) the date of the decision passed on the review. or 4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution. or to take some step in aid of execution of the decree or order, or 5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or

THE SECOND SCHEDULE.—(*Continued.*)

Description of application.	Period of limitation.	Time from which period begins to run.
179.— <i>Continued.</i>		<p>* 6 (where the application is to enforce any payment which the decree or order directs to be made at a <i>certain date</i>) <i>such date.</i></p> <p><i>Explanation 1.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made</p>

* As amended by Act XII of 1879, section 108.

THE SECOND SCHEDULE.—(*Concluded.*)

Description of application.	Period of limitation.	Time from which period begins to run.
179.— <i>Continued.</i>		<p>against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation 11.</i>—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p>
180.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.	Twelve years.	<p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right:</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.</p>

PART XV.

Minors.

ACT XL of 1858, s. 12.

See sec. 2 of Act IX of 1879 (Wards Act).

PART XVI.

Opium.

REGULATION XX OF 1817, s. 29.

Execution of Criminal Process in the Commercial, Salt and Opium Departments; and Duties of Dároghas relating to those Departments.

29. *First.* - In all bailable cases, where it may be necessary, under the provisions of this Regulation, to summon or apprehend any officer or person employed in the Opium Department, the daroghas of Police shall transmit the summons or warrant, under a sealed cover, addressed to the Opium Agent, or the head Native officer of the arang, kotni or chauki, who will either give, or direct sufficient security to be given, for the due attendance of the party, certifying on the back of the process the manner in which it has been served, and by whom the security has been given, or causing the defendant to accompany the officer bearing the darogha's process to the thana.

Second.—In cases of bailable nature, in which a person under engagements, and employed in the Opium Department, may be summoned under the provisions of the preceding clause, during the manufacturing season, the darogha of Police shall, with the view

In such cases the accused not to be forced to appear till manufacturing season.

of preventing unnecessary interruption to the manufacturer, require the party summoned to appear in person or by vakil, either during or after the manufacturing season, as the circumstances of the case may dictate, subject to the future orders of the Magistrate, to whom the darogha shall in each instance report the reasons which may have influenced him in the exercise of the discretion here vested in him.

Third.—Summonses to any officers or persons employed

Rules for serving summonses on witnesses employed in the Company's arangs, and form of their recognizance.

in the Opium Department to attend as witnesses, shall be served in the manner directed by the preceding clauses of this section ; but the Opium Agent, or the head Native officer of the arang, kothi or chauki, shall,

instead of requiring the person summoned to give security, or proceed to the thana, take from the witness a recognizance agreeable to the form No. 13 of the Appendix, and shall deliver the same to the officer serving the process.

Fourth.—If a charge shall be preferred to a Police-

Warrants for offences not bailable to be served upon persons so employed, as upon others.

darogha against any officer or person employed in the Opium Department, for an offence that is not bailable, and there shall appear to the darogha

of Police sufficient ground under the provisions of this Regulation for apprehending the person so charged, the warrant for his apprehension shall require him to attend immediately in person, and shall be executed in the same manner as upon persons not so employed.

But the darogha, after securing the offender, is to give

the darogha giving notice to Agent.

notice of his apprehension to the Opium Agent, or to the head officer of the nearest arang, kothi or chauki, as the case may be.

Fifth to Eighth.—[Repealed by Act No. VIII of 1875.]

Ninth.—All officers of Police are strictly enjoined, un-

Police-officers to suppress illicit cultivation of opium.

der pain of dismissal from office, to assist in suppressing the illicit cultivation, manufacture, sale, purchase,

importation, transportation or possession of opium.

Tenth and Eleventh.—[Repealed by Act No. XVI of 1874.]

Twelfth.—Any Police-darogha who shall knowingly permit the cultivation of the poppy within his jurisdiction, or who shall be convicted of conniving in any respect at the illicit cultivation of the poppy, shall, besides being liable to dismissal from office for neglect of duty, be further subject, on conviction before the Magistrate of the zila, to the payment of the fine stated in section 31, Regulation XIII, 1816, for whatever quantity of land shall have been so illegally cultivated within his jurisdiction with his knowledge or connivance; and the fine, if not duly paid, shall be commutable to imprisonment for a period not exceeding six months.

Section 31 of Regulation XIII of 1816 has been repealed by Act XIII of 1857. This Act relates to the cultivation of the poppy, and the compiler has not considered it of sufficient importance for insertion in the Manual.

So much of section 29 as relates to the execution of criminal process in the Salt Department has been repealed by Act VII, 1861 (B. C.)

ACT No. I OF 1878.

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

1. This Act may be called “The Opium Act, 1878;”

It shall extend to such local areas as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct;

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule:

And in Acts No. XI of 1849, No. XXI of 1856 and
 Amendment of Acts. No. X of 1871, and in Bengal Act
 No. II of 1876, the words 'intoxi-
 cating drugs' (wherever they occur) shall not include
 opium.

The reference made to Bombay Regulations XXI of
 1827 and XX of 1830 in Act No. VII
 Amendment of Act of 1836 shall be read as if made to
 VII of 1836, s. 1. the corresponding sections of this Act.

3. In this Act, unless there be
 Interpretation- something repugnant in the subject or
 clause. context—

'Opium' includes also poppy - heads, preparations or
 admixtures of opium, and intoxicat-
 'Opium.' ing drugs prepared from the poppy:

But see definition of 'opium' in the Opium Rules. Medical practi-
 tioners are not bound to take out licenses for selling chlorodyne, opium
 liniment, &

'Magistrate' means, in the Presidency-towns, a Presi-
 'Magistrate.' dency Magistrate, and elsewhere a
 Magistrate of the first class or (when
 specially empowered by the Local Government to try
 cases under this Act) a Magistrate of the second class.

'Import' means to bring into the territories adminis-
 'Import.' tered by any Local Government from
 sea or from foreign territory, or from
 a territory administered by any other Local Government.

'Export' means to take out of the territories adminis-
 'Export.' tered by any Local Government to
 sea, or to any foreign territory, or to
 any territory administered by another Local Government.

'Transport' means to remove from one place to another
 'Transport.' within the territories administered by
 the same Local Government.

4. Except as permitted by this Act, or by any other
 Prohibition of poppy enactment relating to opium for the
 cultivation and posses- time being in force, or by rules framed
 sion, &c., of opium. under this Act or under any such
 enactment, no one shall—

(a) cultivate the poppy;

- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under section six.

6. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

7. The Governor General in Council may, by order notified in the *Gazette of India*,

(a) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the Local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section seven; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

9. Any person who, in contravention of this Act, or of rules made and notified under section five or section eight,
 Penalty for illegal cultivation of poppy, &c. shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may

(a) cultivates the poppy, or

(b) manufactures opium, or

(c) possesses opium, or

(d) transports opium, or

(e) imports or exports opium, or

(f) sells opium, or

(g) omits to warehouse opium or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may

extend to one year, or with fine which may extend to one thousand rupees, or with both ;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10. In prosecutions under section nine, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium. 11. In any case in which an offence under section nine has been committed,

(a) the poppy so cultivated ;

(b) the opium in respect of which any offence under the same section has been committed ;

(c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting ;

(d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is

Order of confiscation by whom to be made.

liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

Power to make rules,
regarding

disposal of things
confiscated

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest
and seize, on informa-
tion that opium is un-
lawfully kept in any
enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue, superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,

(a) enter into any such building, vessel or place;

(b) in case of resistance, break open any door and remove any other obstacle to such entry ;

(c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section eleven or any other law for the time being in force relating to opium, and

(d) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places. 15. Any officer of any of the said departments may

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section eleven or any other law for the time being in force relating to opium,

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search and arrest.

16. All searches under section fourteen or section fifteen shall be made in accordance with the provisions of the Code of Criminal Procedure.

17. The officers of the several departments mentioned in section fourteen shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist each other.

18. Any officer of any of the said departments who without reasonable ground of suspicion, enters or searches, or causes to be entered or searched any building, vessel or place,

Vexatious entries, searches, seizures and arrests.

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

25. When any person in compliance with any rule made hereunder gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74, and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

Acts of the Governor General in Council.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1849	Abkárí Revenue of Calcutta ...	In section 5, the word "opium." In section 6, the word "opium" and the last thirty one words. In section 15, from and including the words "except in the case," to the end of the section. In section 33, from and including the words "except opium" down to and including the words "each seer;" and the words "or in the cases of opium as aforesaid, a reward of one rupee eight annas for each seer."
Act III of 1852	Spirituous Liquors, Bombay ...	Section 10, so far as it relates to opium.
Act XXI of 1856	Bengal Abkárí Act ...	In section 28, the word "opium." Sections 34, 51, 52, 53 and 87. In section 35, the words "or opium."

SCHEDULE.—(Continued.)

Acts of the Governor General in Council.

Number and year.	Subject or title.	Extent of repeal.
Act XXI of 1856 (<i>contd.</i>)	Bengal Abkárí Act	... In section 49, the words "except opium." Section 59, so far as it relates to opium. In section 75, the words "except opium" and from and including the words "opium seized," down to the end. In section 76, from and including the words "except opium," down to and including the words "each seer;" and from and including the words "or in," down to and including the words "each seer." In paragraph 8 of section 90, the words "and opium."
Act XIII of 1857.	Cultivation of the poppy and manufacture of opium.	Section 2.
Act X of 1871	The Northern India Excise Act	In paragraph 5 of section 3, the word "opium." Sections 18, 65, 66, 67 and 87. In section 19, the words "or opium." Section 46, so far as it relates to opium. In section 46, paragraph 3, from and including the words "as well as," down to and including the words "dealings in opium." In section 63, the words "except opium." In section 78, the words "except opium," and paragraph 2.

SCHEDULE.—(Continued.)

Acts of the Governor General in Council.

Number and year.	Subject or title.	Extent of repeal.
Act X of 1871 (<i>contd.</i>)	The Northern India Excise Act	In section 79, from and including the words "except opium," down to and including the words "each seer;" and from and including the words "or in," down to and including the words "each seer."
Act IV of 1872	The Panjáb Laws Act ...	Section 49.
Act XXVI of 1872.	Panjáb Opium Law Amendment	The whole Act.
Act VI of 1873	Transshipment of goods. ...	Section 7.
Act XVI of 1875.	The Indian Tariff Act ...	Section 9.
Act XXIII of 1876.	To amend the law relating to Opium.	The whole Act,
Act VI of 1877	Postponing the day on which the Opium Act, 1876, is to come into force.	The whole Act.

Acts of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
Act II of 1876	To amend Act XI of 1849, Act XXI of 1856, and Act IV (B. C.) of 1866.	In section 3, in the section substituted for section 33 of Act XI of 1849, the words "except opium," and from and including the words "confiscated opium," down to and including the words "general order." In section 3, in the section substituted for section 34 of Act XI of 1849, the words "except in the case of

E.—(Continued.)

Acts of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
Act II of 1876 (<i>contd.</i>)	To amend Act XI of 1849. Act XXI of 1856, and Act IV (B.C.) of	opium," and from and including the words "and in the case of opium," down to and including the words "similarly distributed." In section 10, in the section substituted for section 75 of Act XXI of 1856, the words "except opium," and from and including the words "confiscated opium," down to and including the words "general order." | In section 10, in the section substituted for section 76 of Act XXI of 1856, the words "except in the case of opium," and from and including the words "and in the case of opium," down to and including the words "similarly distributed."

Bombay Regulations.

Bombay Regulation XXI of 1827.	Duty on opium	The preamble, from and including the words "with the combined." down to and including the words "the prohibited." Chapters I, II III and IV.
Bombay Regulation XX of 1830.	Malwa opium	So much as has not been repealed.

PART XVII.

Partition.

ACT No. VIII (B.C.) OF 1876.

An Act to make better provision for the Partition of Estates.

WHEREAS it is expedient to consolidate and amend the law relating to the partition of estates ;
 Preamble. It is enacted as follows :—

PART I.

PRELIMINARY.

Short Title. 1. This Act may be called the “ Estates Partition Act, 1876.”

Local extent. It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal ;

Commencement. And it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor General, which date is hereinafter referred to as the commencement of this Act.

Laws repealed. 2. On the commencement of this Act, the Regulations and Acts specified in the schedule hereto annexed, to the extent mentioned in the third column thereof, shall cease to have effect in the territories subject to the Lieutenant-Governor of Bengal, save so far as they repeal or modify any other Regulations or Acts, and save so far as regards the partition of any estate which shall be pending at the time of the said commencement.

The partition of any estate which shall be pending at the time of commencement of this Act shall (except as provided in the next succeeding section) proceed and be completed in the same manner as if this Act had not been passed.

3. The provisions of this Act, so far as they relate to the continuation of a partition from the point which it has reached, or to the staying of the partition of an estate, or to striking a partition-case off the file, may be applied, at the discretion of the Collector, in all cases of partition of estates pending at the time of the commencement of this Act; provided that, before applying such provisions to the continuation of a partition, the Collector give due notice in each case to the parties concerned that such provisions will be applied.

Interpretation-clause. 4. In this Act—unless there be something repugnant in the subject or context—

(i) ‘Amin’ means a person who is appointed by the Collector or Deputy Collector to make any measurement, survey, or local inquiry, or to prepare the papers showing the result of any measurement, survey, or local inquiry.

(ii) ‘Applicant’ means any person who has applied to the Collector under the provisions of this Act for the separation from the parent estate of lands representing his interest in such parent estate, and for the assignment to him of such lands as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable.

(iii) ‘Assets of land’ include the rental of the land with respect to which the expression is used, and all profits derived by the proprietors out of such land from rights of pasturage, forest-rights, fisheries, and all other legal sources.

‘Assets of an estate.’ (iv) ‘Assets of an estate’ mean the assets of all land included in an estate.

(v) ‘Board’ means the Board of Revenue for the provinces for the time being subject to the Lieutenant-Governor of Bengal.

‘Chapter.’ (vi) ‘Chapter’ means a chapter of this Act.

(vii) 'Deputy Collector' includes any Assistant Collector, Deputy Collector, or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition and allotment of assessment under this Act, or to conduct any of the proceedings connected with such partition and allotment.

(viii) 'Estate' means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue.

(ix) 'Joint undivided estate' means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue, and of which two or more persons are proprietors.

(x) 'Land' does not include the houses and buildings standing thereon.

(xi) 'Lieutenant-Governor' means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

(xii) 'Parent estate' means any estate for the partition of which proceedings may be in progress under this Act, or of which the partition may have been effected under this Act.

(xiii) 'Proprietor' includes every person who is in possession of any estate under partition, or of any portion of such estate, or of any interest in such estate, or in any part of such estate, as owner thereof, whether such person be or be not a recorded proprietor of the estate.

(xiv) 'Recorded proprietor' means a person whose name is registered on the Collector's General Register of revenue-paying lands as proprietor of an estate, or of any share or interest therein.

(xv) 'Section' means a section of this Act.

(xvi) 'Separate estate' means any distinct estate which may be formed by the partition of a parent estate under this Act, or for

the formation of which proceedings may be in progress under this Act.

(xvii) ‘ The Collector ’ means the Collector of the District on the revenue-roll of which the estate under partition, or which it is proposed to bring under partition, is borne, and includes any officer whom the Board may generally vest (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector of the District has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his duties and functions in respect of the partition of any estate; and any officer whom the Board may specially vest (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act.

(xviii) ‘ The Commissioner ’ means the Commissioner of Revenue to whom the Collector engaged in making the partition is subordinate.

5. All partitions of estates which shall be ordered to be made after the commencement of this Act shall be made under the provisions of this Act, and no such partition made otherwise than under this Act shall relieve any lands from liability to Government for the total demand of land-revenue assessed upon the estate of which they form a part.

6. The amount of land - revenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable, as the assets of such separate estate bear to the whole assets of the parent estate.

7. Except as hereinafter otherwise expressly provided, the average of the amount of rent which was payable for any land by the cultivating ryots during the three years immediately preceding the year in which proceedings are taken under this Act for the partition of the estate shall, for the purposes of this Act, be deemed to be the rental of such land; and if any land is not let, but is held and occupied

directly by the proprietors or any of them, the annual rent for which such land might reasonably be expected to let shall be deemed to be the rental of such land.

Exception 1.—If the rent payable by the cultivating ryots on account of any land shall have been determined by any Court of competent jurisdiction, or shall have been altered with the consent of the said ryots at any time during the said three years, the amount so determined, or the amount to which the rent may have been so altered, may, if the Collector think proper, be deemed to be the rental of the land.

Exception 2.—If any land is held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of revenue, the rent payable by the holder of such tenure shall be deemed to be the rental of such land.

Exception 3.—If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the said estate, or any person deriving his title from such proprietors, the rent payable by the holder of such tenure (whether he be known as talukdar, patnidar, mukarraridar, or by any other designation) shall be deemed to be the rental of such land.

Exception 4.—If any land be unoccupied, such amount as the Collector may determine, with reference to all the circumstances of the case, shall be deemed to be the rental of such land.

PART II.

OF THE RIGHT TO CLAIM PARTITION.

8. Except as hereinafter otherwise provided, every recorded proprietor of a joint undivided estate, who is in actual possession of the interest in respect of which
- Who entitled to claim partition.

he is so recorded, is entitled to claim a partition of the said estate, and the separation therefrom and assignment to him as a separate estate of lands representing the interest of which he is in such possession; provided that, and as far only as, such partition, separation, and assignment can be made in accordance with the provisions of this Act.

Any two or more such recorded proprietors may claim that lands representing the interests of all such claimants may be formed into one separate estate, to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making such joint claim.

In a suit for partition in respect of a mouza held jointly by two co-sharers in the proportion of 12 annas and 4 annas, it appeared that the plaintiff held a mokurrari of a small portion of the share of the 12 annas co-sharer, while the defendant held a putni of the entire 4 annas share of the other co-sharer. The zemindars were not parties to the suit, the object of the plaintiff being to have the small area in which he had a 4-anna share divided as between him and the putnidar of the entire 4 annas share.

Held, that (1) a partition of the kind asked for could not legally be made without the zemindars being made parties to the suit, and (2) that a partition could not be enforced of a part of the estates held by the defendant. 9 C. L. R., 170.

A suit will not lie in the Civil Court for partition of portion only of a joint estate. 8 C. L. R., 367.

9. (a) If the interest of any recorded proprietor who is entitled to claim partition as aforesaid is an undivided share in an estate held in common tenancy, such person shall be entitled to have assigned to him as his separate estate lands of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(b) If the interest of such recorded proprietor is the proprietary right of certain specific mouzahs or lands forming part of the parent estate, and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mouzahs or lands.

(c) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in certain specific mouzahs or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate

estate lands situated within such specific mouzahs or tracts, of which the assets shall bear the same proportion to the assets of such specific mouzahs or tracts as his undivided share in such specific mouzahs or tracts bears to the entire mouzahs or tracts.

Provided that, if the interest of such recorded proprietor consists of such undivided share in more than one mouzah or tract, he shall not be entitled to have lands assigned to him in every such mouzah or tract; but the Collector may assign to him as his separate estate lands situated in any one or more of the said mouzahs or tracts, provided that the assets of such lands are in proportion to the aggregate of the interests which he holds in all such mouzahs or tracts.

(d) If such recorded proprietor holds in the parent estate more than one of the kinds of interest specified in this section, lands shall be assigned to him as far as possible in accordance with the principles above laid down.

10. Notwithstanding anything hereinbefore contained,
Life estate. no person having a proprietary interest in an estate for the term of his life only shall be deemed to be a person entitled to claim partition under this Act.

A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband, is not a person, having a proprietary interest in an estate for the term of her life only, within the meaning of s. 10, Act VIII of 1876, B.C. Even if she were, a Civil Court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her. 1. L. R., 9 Cal., 211; 9 W. R., 108; 9 Moore's I. A., 539, referred to.

11. No application for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land-revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate.

12. Whenever a division of the lands of any estate has

Partition of an estate in which private division has been made, not to be made except on joint petition of proprietors or on order of Civil Court.

been made by private arrangement of the proprietors thereof, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in the estate, no such

estate shall be brought under partition, and no partition of such estate shall be made under this Act, otherwise than on a joint petition presented under section one hundred and one or section one hundred and five by all the proprietors thereof, unless such partition shall have been ordered to be made by a Civil Court.

Where one of several co-sharers, owners of a piece of land defined by metes and bounds, and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly. I. L. R., 7 Cal., 153.

Under sec. 30 of Reg. XIX of 1814, it was held that if the parties have divided the lands without agreeing as to the shares of the Government revenue to be paid by them respectively, all the Collector has to do, when a partition has been applied for, is to make an assignment of the revenue in proportion to the interest of each shareholder. If they have divided the lands and arranged amongst themselves as to the portion of Government revenue which each is to pay, it is open to the Collector to accept or reject that arrangement. The Civil Court has nothing to do with the matter. 2 C. L. R., 134.

13. The Collector may refuse to admit an application

Under certain circumstances Collector may refuse to declare lands held in severalty to be a separate estate.

for the formation of lands held in severalty into a separate estate, if in consequence of such lands being intermingled with those held by other proprietors the result of the partition

would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue, and the Collector may at any time refuse to proceed with a partition which would have such a result.

But a partition may be allowed in such a case if the recorded proprietors shall agree to such a distribution of land as shall make the estates formed by the partition reasonably compact.

Nothing in this section shall be understood to prohibit the partition into separate estates of a parent estate which before such partition is not compact and consists only of scattered parcels of land.

14. No proprietor who has alienated any portion of his Interest alienated with special condition as to revenue liability. interest in an estate, or in any specific lands of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under the provisions of section six);

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such transferee, shall be entitled to claim a separation of the interest which has been so acquired;

Provided that a separation of such interests may be made if the parties concerned agree to waive the conditions of the contract as regards the proportion of revenue for which the transferor and transferee or their representatives respectively are liable, and to hold the estates which may be allotted to them respectively by the partition, subject to the payment of such amount of land-revenue as may be assessed upon them respectively by the Revenue Authorities under this Act.

15. Notwithstanding that a parent estate may have Arrears of revenue may be realized by sale of parent estate. been declared to be under partition as provided in section thirty-one, any arrears of revenue accruing due on such estate before the date specified in the notice issued under section one hundred and twenty-three may be realized by sale of the parent estate as if such estate had not been declared to be under partition; and if such sale takes place, the partition-proceedings shall cease from the date thereof.

16. Nothing contained in the last preceding section shall be deemed to affect the provisions of sections 10, 11, 12, 13, or 14 of Act XI of 1859 (*an Act to improve the law relating to sales of lands for arrears of revenue*), or any provisions of any similar law for the time being in force in respect to the opening of separate accounts for different shares in an estate, and the protection afforded to such shares thereby :

Provided that, if any share in any estate is sold for its own arrears of revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition-proceedings, which shall proceed as if no such sale had taken place ; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition-proceedings.

PART III.

OF THE APPLICATION FOR THE PARTITION ; THE ADMISSION OF AN ESTATE TO PARTITION ; AND THE DISCONTINUANCE OF THE PARTITION-PROCEEDINGS AFTER SUCH ADMISSION.

17. All applications for partition shall be made to the Collector of the district on the revenue-roll of which the estate is borne, and shall be made in person, or by duly authorized agent, on paper bearing such stamp as may be required by any law for the time being in force.

18. The application shall be signed by the applicant, and shall supply the following information in regard to the parent estate, so far as the particulars are known to the applicant or can be ascertained by him :—

- (a) name of the estate ;
- (b) number under which the estate is borne on the revenue-roll, and the revenue demand for which it is liable ;

number under which the estate is borne on the Collector's General Register of revenue-paying land ;

(d) name and address of every proprietor, whether recorded or unrecorded ;

(e) the character and extent of the interest of which each proprietor is in possession ;

(f) a specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.

19. Subject to the provisions of section sixty-one, every

Application must be accompanied by copy of rent-roll and statement of rents. application shall, if possible, be accompanied by a copy of the rent-roll of the estate, by a statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding such application, and by copies of any measurement papers of the estate which the applicant may have in his possession.

The said rent-roll, statement, and measurement papers shall be attested by the patwaris of the villages, if any, and every such application, rent-roll, and statement shall be presented, subscribed, and verified as provided in section fifty-two.

If the applicant is unable to produce a rent-roll or statement as above required, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

20. If the application does not fulfil the requirements

Collector may reject application. of the three last preceding sections, the Collector may reject such application or may order it to be amended.

21. If in the opinion of the Collector the application

Procedure of Collector on receipt of application. fulfils the said requirements, and there appears to be no objection to making the partition, the Collector shall publish a notification of the application in the manner prescribed in section one hundred and thirty-four, and shall

also cause copies thereof to be posted up at the Court of the Judge of the district, at the Court of every Munsif and Subdivisional Officer within whose jurisdiction, and every Police Station within the jurisdiction of which, any lands appertaining to the estate are known to be situated, and shall invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection either in person, or by duly authorized agent, on a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate.

22. Notice of the application shall also be served in the manner prescribed by section one hundred and thirty-five on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application.

23. If any objection be made to the partition by any person claiming a proprietary right as aforesaid on or before the day specified in the notification published under section twenty-one, or at any subsequent time if it shall seem fit to the Collector to admit such objection, and the Collector, on consideration of such objection, shall be of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and in that case shall record the grounds of such rejection.

24. If the objection raises any question of the extent of interest, or of right or title as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it shall appear to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry as he may deem necessary into the objection, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in the last preceding section,

estate into separate estates as shall have been made by the Collector, and not to disturb such division ; and if the effect of any such decree shall be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition-proceedings, such decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ; and every person or body of persons so declared entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only :

and every such decree as aforesaid shall be executed by placing the person or persons so declared entitled to recover in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition-proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the aforesaid decree.

29. Subject to the provisions of section eleven, a Civil Court may at any time direct the Collector to assign to any person lands representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate, or to divide off from any estate any specified villages or lands, and to assign them to any person to be held as a separate estate, provided that an application for such partition and separation shall be presented by such person, as required by sections seventeen, eighteen, and nineteen ; but no Civil Court shall in any case specify the amount of revenue for which any separate estate which

Civil Court may order partition.

it may direct to be formed under the provisions of this section shall be liable.

What the parties may do without suit, the Civil Court may do on being brought. 2 C. L. R., 134.

Partition of an estate paying revenue to Government cannot be effected in a Civil Court. The Court can merely order a partition. I. L. R., 8 Cal., 649.

On partition of a certain mehal, lands belonging thereto were excluded by the Collector. It being afterwards satisfactorily found that such lands really belonged to the mehal, and ought not to have been so excluded, it was held that a suit would lie in a Civil Court for partition of the excluded lands on the basis of the former partition. 1 C. L. R., 38.

The Civil Court may direct partition of a revenue-paying estate when the partition can be carried out without apportioning the Government revenue. 20 W. R., 182.

30. The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act, and no Civil Court shall direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

31. If no objection be made within the time allowed under section twenty-one to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for, he shall direct that the application be admitted, and record a proceeding declaring the estate to be under partition, for the purpose of forming and assigning to the applicant a separate estate.

In such proceeding the Collector shall declare the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ;

and, if more than one separate application for separation shall have been made and admitted, the extent of interest which he finds to be held by every separate applicant or body of joint applicants respectively :

and also the extent of interest which remains to any recorded proprietor, or to any number of recorded proprietors who are not applicants ;

and shall order that lands proportionate to the interest so declared to be held by each applicant, or body of joint

applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants ;

and that lands proportionate to the interest so declared to remain to the recorded proprietor, or the number of recorded proprietors who are not applicants, shall be left forming a separate estate.

32. If at any time after the Collector has made an order for partition under the last preceding section, any recorded proprietor in the estate other than the original applicant shall apply for the separation of his share, the Collector may either order that the proceedings for effecting such separation shall be carried on simultaneously with those for separating the share of the original applicant, or, if he consider that such a course would entail delay in the completion of the original proceedings, he may order that no action shall be taken on such subsequent application until after the proceedings for the separation of the originally applicant's share shall have been completed.

In the latter case all or any of the rent-rolls, measurements, and other papers which were used in the separation of the original applicant's share, may be used, as far as they are applicable, in the partition for which subsequent application has been made.

33. The Collector may refer any application for partition to a Deputy Collector for the purpose of making any enquiries and doing anything required by this Part ; provided that every order—

(a) rejecting an application under section twenty-three ;

(b) directing, under section twenty-four, that the partition shall proceed, or shall be postponed ;

(c) directing, under section thirty-one, that an application for partition be admitted, and declaring an estate to be under partition ;

(d) made under the first clause of the last preceding section ;

(e) appointing a Deputy Collector under the next succeeding section to carry out the partition ;

shall be passed by the Collector and not by any Deputy Collector.

34. As soon as the Collector has declared an estate to be under partition as provided in section thirty-one, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

As soon as estate declared to be under partition, Collector may appoint Deputy Collector.

35. If, at any time after an order shall have been passed for making a partition, all the recorded proprietors of the estate shall present a petition to the effect that they do not wish the partition to proceed, the Collector may, on the report of the Deputy Collector or otherwise, strike the partition case off the file, on payment by the proprietors of all costs and expenses incurred in and about such partition; and any such costs and expenses which shall not already have been levied as provided in section thirty-nine or section forty, shall be levied in proportion to the shares of the respective proprietors.

Partition may be stayed if parties so desire.

Recovery of costs.

36. If at any time after an order shall have been passed for making a partition, it shall appear from information which was not before the Collector at the time the partition was ordered, or otherwise, that any sufficient reason exists why the partition should not be proceeded with, the Commissioner may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file; and in such case any costs and expenses of the partition which shall not already have been levied as provided in section thirty-nine or section forty, shall be levied in proportion to the shares of the respective proprietors.

Partition may be stayed and proceedings quashed by Commissioner.

PART IV.**OF ESTABLISHMENTS FOR EFFECTING PARTITIONS
AND OF THE COST THEREOF.**

37. For the purposes of this Act, the Deputy Collector may, with the approval of the Collector, and subject to any rules made in that behalf by the Board, appoint such establishments as may be required for making the measurement and survey of lands, for ascertaining and recording the rates of rent, for making any other local inquiries, for the preparation of the papers, and for other matters in each case; and the Collector may appoint such peshkars or other superior officers as may be required to test the work of the amins, and for the performance of similar duties; provided that the scale of remuneration of such officers, and the time for which they shall be employed, shall be sanctioned by the Commissioner.

• 38. In any district or division in which partitions may be so numerous or so extensive as to render necessary the appointment of special establishments in the office of the Collector or of the Commissioner, the Collector and the Commissioner may, with the sanction of the Board, appoint such establishments.

39. As soon as possible after an estate has been declared to be under partition as provided in section thirty-one, the cost of making the partition shall be estimated, and the amount shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf.

If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as above provided.

40. The cost shall be apportioned on the proprietors of each share in proportion to their shares; but whenever it shall appear to the Commissioner that the partition-

Deputy Collector may appoint officers for making measurement of lands, &c.

Special establishments may be appointed.

Cost of partition to be levied from proprietors in accordance with rules laid down by the Board.

Apportionment of costs.

proceedings have been unnecessarily delayed, and the cost of the partition enhanced by obstacles vexatiously put in the way of their completion by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisitions made upon him or them, the Commissioner may direct that such portion of the cost as he may think proper in excess of the amount proportionate to his or their share shall be levied from such proprietor or proprietors.

41. Whenever any local enquiry may be held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-rolls, or other information which has been laid before the Deputy Collector, the Deputy Collector may declare the cost which has been incurred by such enquiry, and may direct that the entire cost so declared shall be paid by the person making the objection, or by any one of the proprietors, or that such cost shall be paid in such proportions as he shall think fit, by the said person and the proprietors or any of them, or that such cost be deemed a part of the general cost of making a partition as prescribed in section thirty-nine.

42. Upon the completion of the partition, the Collector shall make an order declaring the total cost thereof. The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or by levying from them in the manner provided in section one hundred and thirty-eight, if necessary, any sums remaining due.

43. Whenever it shall appear to the Lieutenant-Governor that in any district the work required to be done by Deputy Collectors in connection with partitions under this Act is so great that such work would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, the Lieutenant-Governor may make an order directing that the salary of such one or

more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district as part of the cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary shall, in addition to the items mentioned in the last preceding section, be deemed to be a portion of the costs of every partition.

For the purposes of this section the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

What are costs leviable from proprietors.

44. For the purposes of sections thirty-nine, forty, and forty-two, the costs of any partition shall be deemed to be

(a) the cost of any establishments entertained for the partition under section thirty-seven, or such amount as the Collector may think proper in respect of the services of any such establishments which are entertained for the purposes of making partitions in the district;

(b) all contingent expenses incurred in and about the partition, and

(c) such portion of the cost of any establishment entertained under section thirty-eight as the Collector may order.

45. Notwithstanding anything contained in the eight last preceding sections, the Lieutenant-Governor may direct that in any district a fund, to be called the "Estates' Partition Fund," shall be formed, into which all sums levied from the proprietors of estates in respect of partitions of their estates shall be paid.

Whenever such a fund shall have been established in any district, all expenses of making partitions of estates in such district shall, except as hereinafter otherwise provided, be defrayed from such fund.

46. Whenever the Lieutenant - Governor shall have ordered an "Estates' Partition Fund" to be formed in any district, the charges leviable from the proprietors of any estate under partition may be estimated and levied according to the estimate in each case as provided in section thirty-nine and forty, subject to final

Procedure when Estates' Partition Fund formed in any district.

adjustment, as provided in section forty-two; or they may be levied according to a general scale of fees to be fixed by the Board.

47. Such scale of fees shall be fixed as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another, and shall be revised from time to time by the Board for that purpose.

Such fees shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf, and the provisions of section forty shall be applicable to such fees.

48. An abstract of the Estates' Partition Fund of each district made up to the end of each year shall be published in the *Calcutta Gazette*, and by being posted up at the office of the Collector of the district.

49. For the purposes of sections forty-five, forty-six, and forty-seven, the expenses of making partitions in any district shall be deemed to be

(a) the cost of all establishments entertained in the district under section thirty-seven;

(b) all contingent expenses incurred in all partitions in the district;

(c) the cost of any special establishment appointed in the office of the Collector under section thirty-eight;

(d) such portion as the Commissioner may direct of the cost of any special establishment appointed in his office under section thirty-eight;

(e) the salary of any one or more Deputy Collectors which the Lieutenant-Governor may have ordered under section forty-three to be recovered from the proprietors of estates under partition.

50. Whenever any Civil Court shall make a decree awarding or declaring any proprietary right in an estate, and shall require the Collector to make a partition of the estate, such Court may at the same time direct,

Civil Court may in certain cases order parties to pay expenses incurred in dividing an estate.

that the party or parties who may have withheld the right so decreed shall defray the whole of the expense which may be incurred in and about the partition, or the whole of the fees payable in respect of the partition under section forty-six,

or that the said expenses or fees shall be defrayed by all or any of the parties to the suit in which the decree was made in such proportions as the Court may, from a consideration of the particular circumstances of the case, deem equitable ;

Copies of all orders which the Court may pass under this section shall be transmitted to the Collector for his guidance, together with the precept which the Court may issue to him requiring him to divide the estate ; and the Collector shall levy the said expenses and fees from the parties in the proportion ordered by such Court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector.

PART V.

OF THE PARTITION-PROCEEDINGS UP TO THE ADOPTION OF A RENT-ROLL AND MEASUREMENT PAPERS.

51. As soon as the Collector shall have made an order under section thirty-one declaring an estate to be under partition, the Deputy Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated, and at the Court of every Munsif and of every Subdivisional Officer within the jurisdiction of whom, and at every Police Station within the jurisdiction of which, any such lands are known to be situated, intimating his intention to proceed with the partition, and requiring all the proprietors of the estate to produce before a certain date, being not less than forty days from the date of such notification, either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies

of any measurement papers of the estate which may be in their possession.

A notice to the same effect shall also be served as provided in section one hundred and thirty-five on each proprietor of the parent estate.

The Deputy Collector may, on sufficient grounds for so doing being shown to his satisfaction, from time to time extend the period for producing any such return.

52. Every rent-roll, statement of rents collected, and measurement paper furnished to the proprietor to be subscribed and verified. Collector under this Act shall be presented by the person who is required to produce the same or by a duly authorized agent of such person who has a personal knowledge of the facts stated therein, and shall be subscribed and verified at the foot by such person or such agent in the manner following, or to the like effect:—

“ I, A.B., do declare that this rent-roll (*statement, or measurement paper*) is correct to the best of my knowledge and belief.”

If the rent-roll, statement, or measurement paper shall contain any entry which the person making the verification shall know or believe to be false, or shall not believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

53. If any proprietor who is required to produce any rent-roll or statement by notice as required cannot produce aforesaid is unable to produce such rent-roll or statement, he shall state to the Deputy Collector the cause thereof and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Deputy Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

54. The Deputy Collector may, if necessary, make, or may cause to be made, a measurement of all or any of the lands comprised in the estate, and may prepare or cause to be prepared a rent-roll, and Deputy Collector may order measurement of land and may test rent-roll.

may test or cause to be tested on the spot any rent-roll which has been produced as aforesaid, and may make or cause to be made any local enquiry which he may consider necessary.

55. Before proceeding or deputing the amin to the spot, the Deputy Collector shall publish a notification in the manner prescribed by section one hundred and thirty-four, requiring the several proprietors of the estate, their managers, and any other persons employed in the management of the land, or otherwise interested therein, to attend in person or by agent upon him, or upon the amin who is deputed to make the measurement or enquiry, for the purpose of pointing out boundaries and of affording such assistance and information as may be required for the purposes of this Act.

56. The Deputy Collector, and any amin or other person who is specially authorized in that behalf by the Collector, may, by a notice served as provided in section one hundred and thirty-five, require any proprietor or other person whose attendance may be required to attend before the Deputy Collector or amin who is making such measurement or enquiry within a specified time at any place for any of the purposes aforesaid.

57. If any objection be made to a measurement, map, or rent-roll prepared by the amin, or if for any other reason it seems desirable, the Deputy Collector shall, as soon as possible after completion of the amin's work, himself test, or shall cause to be tested on the spot, such measurement, map, and rent-roll, and may accept, amend, or reject the same, or any of them. If the Deputy Collector shall deem it necessary, he may cause the work or any portion thereof to be done again.

58. The Deputy Collector may examine any person on solemn affirmation in regard to the papers produced before him, whether by the proprietors, by the amin, or otherwise, and shall allow the parties concerned to put any necessary questions to such person.

The Deputy Collector shall also allow any proprietor

or other person interested to examine the papers so produced, and to take a copy of the same, and after such examination shall hear any objections which any of the persons interested may make in respect of such papers, and shall decide whether any, and (if any) which, of the papers as they stand, or with such modifications as he may think necessary, shall be accepted as correct for the purposes of the partition.

59. If any proprietor who has been required to produce a rent-roll or statement under section fifty-one, fails to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, or fails to state to the Deputy Collector the name and address of any person under section fifty-three, the Deputy Collector may declare that the said proprietor shall, for the purposes of the partition, be bound by such rent-roll as the Deputy Collector may adopt as the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

60. If any person who has been required to produce a rent-roll or statement under section fifty-three shall fail to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, the Deputy Collector may declare that the proprietor who may have stated the name of such person under section fifty-three shall, for the purposes of the partition, be bound by the rent-roll which the Deputy Collector may adopt for the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

61. Notwithstanding anything contained in this Act, if it shall appear to the Deputy Collector that any measurements, maps, rent-rolls, or other papers relating to the estate which have been prepared otherwise than for the purposes of the partition, or otherwise than

for the purposes of this Act, afford information sufficiently trustworthy to enable him to effect the partition, the Deputy Collector may adopt such information and such papers either wholly or in part for the purposes of the partition, and may dispense with any rent-rolls, maps, or other papers for which he is authorized to call, or which an applicant is required to produce under this Act.

62. No proprietor or other person who shall have failed to attend in person or by agent during the measurement as required by the notification published under section fifty-five, shall be entitled at any subsequent time to make any objection to such measurement; but the Collector may admit any objection made by such proprietor or person if he think fit, provided that any expense entailed by a local inquiry made in consequence of such subsequent objection shall be paid entirely by such proprietor or person.

63. When the Deputy Collector is finally satisfied that the papers before him, whether rent-rolls, measurement papers, maps, or other papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section one hundred and thirty-four, calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and shall serve a notice to the same effect on each proprietor or his agent.

PART VI.

OF PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

64. On the date fixed under the last preceding section, if a petition to that effect signed by all the recorded proprietors shall have been presented, the Deputy Collector

Deputy Collector may allow parties to make a private partition.

may allow such proprietors to make a private partition of the estate amongst themselves on the basis of the papers which have been accepted or adopted for the purposes of the partition by the Deputy Collector, or may refer the partition to be made by an arbitrator or arbitrators on such basis.

If the proprietors who have elected to make such private partition shall fail to make the same within such time as may be fixed by the Deputy Collector, the Deputy Collector may refer the partition to be made by an arbitrator or arbitrators, or may make the partition himself.

65. Whenever any partition shall have been referred to arbitration, the proceedings shall be conducted in accordance with the provisions of sections 313 to 325 (both inclusive) of Act VIII of 1859 (*an Act for simplifying the procedure of the Court of Civil Judicature not established by Royal Charter*) as far as those provisions are applicable, and except as herein otherwise expressly provided.

66. The arbitrators shall deliver within a time to be fixed by the Deputy Collector, which time may be further extended by him, a full and complete paper of partition, in such form as may be prescribed by the Board for partitions made by the Collector or Deputy Collector.

67. The arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for their services, the amount of which shall be fixed, with the approval of the Commissioner, by the officer making the reference to arbitration, and shall be considered to form part of the cost of making the partition.

68. Every partition made under the provisions of this Part by the parties, or by arbitrators appointed by them, shall be subject to the approval of the Deputy Collector and to the confirmation of the Collector and the orders of the superior Revenue Authorities; provided that neither the Deputy Collector nor any other authority shall disallow any parti-

tion so made on any other ground than that of fraud, or that, in the opinion of the Deputy Collector or such other authority, the partition cannot be confirmed without endangering the safety of the land-revenue.

69. Whenever a partition has been made under the provisions of this Part, the land-revenue shall be assessed by the Collector on each separate estate into which the parent estate is divided by such partition in the manner prescribed by section six.

Land-revenue to be assessed by Collector.

70. If the paper of partition be not delivered within the time fixed by the Deputy Collector, or within any further period to which the time may have been extended, the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

In default of delivery of partition paper, Collector may withdraw case from arbitration.

PART VII.

OF THE PROCEDURE FROM THE DETERMINATION OF THE GENERAL ARRANGEMENT OF THE PARTITION BY THE DEPUTY COLLECTOR TO THE APPROVAL OF THE PARTITION BY THE COLLECTOR.

71. If no petition shall have been presented under section sixty-four, the Deputy Collector shall, on the date fixed under section sixty-three, or on any other date to which the hearing may have been postponed by a notice posted at the office of the Deputy Collector, consult orally each proprietor present, and endeavour, as far as possible, with the concurrence of the proprietors present, to settle a general arrangement of the partition in accordance with the requirements of this Act.

Procedure when no petition presented under section 64.

For this purpose he shall endeavour to obtain from each proprietor an acknowledgment of his acceptance of the rent-roll, map, and any other papers which have been adopted by the Deputy Collector for the purposes of the partition, and shall briefly record the objections of any proprietor who still objects to accept such rent-roll, map, or other papers.

72. If, in consequence of any objections made before the Deputy Collector has settled the general arrangement of the partition as provided in the last preceding section, the Deputy Collector considers it necessary to make further inquiry, he may, by notice to the recorded proprietors, postpone the settlement of the general arrangement of the partition to a date being not less than fifteen days from the service of the notice on any proprietor.

73. If the objections on account of which the said settlement is postponed are such that the person making the same might have made them on an earlier day, the Deputy Collector may award to each proprietor, who shall have attended in person or by agent in accordance with the notice, such sum, not exceeding sixteen rupees, as he shall think fit by way of compensation for such attendance.

The sum so awarded shall be paid by the person making the objections as aforesaid, and may be recovered from him in the manner provided by section one hundred and thirty-eight.

74. If the objections have already been enquired into and disposed of, or are such as not to render necessary any further inquiry and postponement, or when any objections which may require further enquiry have been disposed of, the Deputy Collector shall record an order to that effect, and, after hearing what each proprietor present may urge, shall hold a proceeding determining the general arrangement of the partition and the mode in which the parent estate shall be divided, and, in a general way, the position of the lands which shall be assigned to each of the separate estates.

In determining the general arrangement of the partition, the Deputy Collector shall be guided by the rules which are laid down in Part VIII, and shall direct the partition to be made in the manner which, in his opinion, is on the whole most in accordance with such rules, and most equitable and most convenient to all parties concerned.

75. The general arrangement of the partition, as determined under the last preceding section, shall be submitted for the sanction of the Collector, who shall by notice fix a date for the consideration of the same, not being less than fifteen days after the publication of the said notice in his office, and, after hearing and disposing of any objection which may be preferred, shall pass such orders as he may think proper, setting aside, amending, or approving the general arrangement made by the Deputy Collector.

76. When the general arrangement has been approved by the Collector, the Deputy Collector shall proceed to fix the exact boundaries of each separate estate, after considering the wishes which the parties may express in respect thereof.

77. When the Deputy Collector shall have so determined the boundaries, he shall cause to be drawn up a paper of partition specifying in detail the villages and lands which he has included in each of the separate estates, the rental thereof, with any other assets of each separate estate, the name or names of the recorded proprietor or proprietors of each separate estate, any stipulations which may have been made regarding places of worship, tanks, or other matters as mentioned in Part VIII, and the amount of land-revenue to be assessed on each separate estate; he shall also prepare a map showing the lands which fall within each separate estate and the boundaries thereof, unless the preparation of such map shall be dispensed with by special permission of the Collector.

78. The Deputy Collector shall submit the partition paper and map as aforesaid and all other papers of the partition to the Collector, with a full report of the proceedings taken, the reasons which influenced the Deputy Collector in selecting the lands included in each separate estate, the nature of the accounts upon which the apportionment of the land-revenue assessed thereon has been based and all other particulars material to the case.

Deputy Collector to prepare extracts of partition papers for each proprietor.

79. The Deputy Collector shall at the same time cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

and shall cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate ;

and the Deputy Collector shall publish a notice at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as above mentioned, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper herein mentioned.

80. On receipt of the papers and report mentioned in section seventy-eight, the Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four fixing a date, not being less than six weeks from the date of the publication of such notification on the parent estate, on which he will proceed to take up the case, and to consider any representations and objections which may be preferred in respect of the partition made by the Deputy Collector, and calling on all parties concerned who may wish to do so, to inspect the papers at his office before such date, and to take copies of any such papers as they may require.

The Collector shall also cause a notice to the same effect to be served on each of the recorded proprietors.

81. On the date so fixed, or on any other date to which the hearing may have been postponed, the Collector shall take into consideration the papers as laid before him, and after calling for any further information which he may deem necessary, and disposing of any objections which

Procedure of Collector thereupon.

shall be made to the proposed partition and allotment of land-revenue, may approve the partition as made by the Deputy Collector with such amendments as he may think proper, or return it for amendment to the Deputy Collector who made it, or to another Deputy Collector, or make a fresh partition himself.

The Collector may return the said papers for amendment or enquiry as often as he may think fit.

82. No proprietor who shall have failed to appear before the Deputy Collector in person or by agent on any date fixed for the arrangement of the partition under section sixty-three or section seventy-two, and no proprietor who shall have failed so to appear before the Collector on any date fixed under either of the two last preceding sections, shall be entitled, at any subsequent time, to make any objection to the orders which may be passed on such dates respectively.

83. When the Collector approves the partition made by the Deputy Collector with amendments, he may cause a fresh partition paper and map to be prepared, or may cause the amendments made by him to be noted on the paper and map submitted by the Deputy Collector.

When the Collector makes a fresh partition himself, he shall cause a fresh partition paper and map to be prepared.

84. Whenever the Collector shall have approved a partition (whether with or without amendments), he shall cause a notice to be served on each of the recorded proprietors that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the date of the service of the said notice, or, if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extract of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper,

as provided in the next succeeding section, then within six weeks of such date.

85. Whenever the Collector shall have approved a partition with amendments, and shall, under section eighty-three, have caused such amendments to be noted on the partition paper and map submitted by the Deputy Collector, the notice to be served on each of the recorded proprietors under the last preceding section shall, in the case of every such proprietor whose separate estate is affected by such amendment, in addition to the particulars mentioned in the said section, require such proprietor to produce before the Collector, within fifteen days of the service of such notice, the extract from the paper of partition which has been prepared, and any map relating to his separate estate which may have been prepared, under section seventy-nine, in order that the amendments made by the Collector in the partition may be noted thereon; and such amendments shall be noted thereon by the Collector accordingly, and such extract and map shall be returned to the proprietor who produced them.

Whenever the Collector shall have caused, under section eighty-three, a new partition paper and map to be prepared, he shall order separate extracts from the portions of the partition paper which relate to each separate estate, and maps, if necessary, to be prepared as required by section seventy-nine, and in such case the notice served under the last preceding section shall, in addition to the particulars mentioned in that section, declare the extracts and maps which were furnished or offered to proprietors under section seventy-nine to be cancelled, and shall require the recorded proprietors to take out of the Collector's office such extracts and maps relating to their respective separate estates.

86. As soon as practicable after the issue of the notice under section eighty-four, the Collector shall forward to the Commissioner all papers relating to the partition as approved or as made by the Collector.

Procedure when Collector approves partition paper with amendments.

Papers to be forwarded to Commissioner.

PART VIII.

OF THE GENERAL PRINCIPLES ON WHICH PARTITIONS
SHALL BE MADE.

*rules applicable to the partition of lands which are held by
the proprietors in common tenancy.*

87. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors, and with the other provisions of this Part, but no partition made or approved by a Collector shall be set aside on the ground only that the separate estates are not compact.

Estates formed in course of partition to be as compact as possible.

88. In selecting the villages or lands to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration

Circumstances to be considered in making partitions.

the advantages or disadvantages arising from situation ;
the vicinity of roads, railways, navigable rivers, or canals ;
the nature and quality of the soil and produce ;
the quantity of cultivable and uncultivable waste land ;
the facilities for irrigation ;
the state of the embankments and watercourses ;
liability to accretion and diluvion ;
and any other circumstances affecting the value of the lands.

89. If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of such house may retain occupation thereof with the offices, buildings, grounds immediately attached thereto, upon agreeing to pay rent for the land occupied by such dwelling-house, offices, buildings, and grounds to the proprietor of the separate estate in which such land is included.

Rule when dwelling-house belonging to one proprietor is situated on ground to be allotted to another proprietor.

The limits of the land so occupied and the rent to be paid for it in perpetuity shall be fixed by the Deputy

Collector, and shall be stated in the paper of partition.

In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from his house to some portion of the separate estate allotted to him.

The rent to be paid for it in perpetuity shall be fixed by the Deputy Collector.

[†] was held under the Regulation that the landlord could not sue to enhance the rent of dwelling-house and homestead fixed under s. 9, Reg. XIX of 1814. 3 B. L. R., 65, A. C.

90. Whenever the Deputy Collector shall think fit, he

Rule contained in last preceding section may be applied to gardens, orchards, &c.

may apply the rule contained in the last preceding section to gardens, to orchards of trees, to land planted with bamboos, and to any other lands which in his opinion are of special value to the proprietor in whose occupation they are found to be, in consequence of improvements made by such proprietor or of the particular use to which such lands are put.

91. The rent fixed in perpetuity on any land by the

Calculation of rental.

Deputy Collector under either of the two last preceding sections shall be considered to be the rental of such land for the purposes of the partition.

92. Whenever the dwelling-house of one proprietor,

Rent may be redeemed.

with the offices, buildings, and grounds immediately attached thereto, shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, the proprietor whose dwelling-house, offices, buildings, and grounds have been included as aforesaid may apply to the Deputy Collector for permission to redeem the annual rent so fixed, and the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, offices, buildings, and grounds have been included will be liable.

93. If the Deputy Collector shall see no such reason to refuse his permission to the redemption being made, he shall certify amount payable by such proprietor in redemption of such annual rent; and such amount shall be calculated and fixed by the Deputy Collector at ten per centum above the sum which would be required to purchase, at the market prices then prevailing, so much stock of the Government loan which was last issued as would yield an annual amount of interest equal to the annual land-rent fixed by the Deputy Collector under section eighty-nine.

94. The proprietor desiring to redeem the rent as aforesaid may pay to the Deputy Collector the amount so certified at any time before possession is given to the several proprietors of the separate estates allotted to each, as provided in section one hundred and twenty-three, but not after such possession has been given.

95. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate such land is situated that such payment has been made, and that the sum will be paid to him or to his authorized agent on application; and that from the date on which possession as aforesaid may be given, the proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against the proprietor of the estate and against any auction-purchaser at a sale for arrears of revenue, including the Government; and from such date the lands shall be so held as a rent-free tenure.

96. The Deputy Collector shall at the time also give notice to the Collector of the district of the creation of such tenure; and the Collector of the district shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859, or by any similar law for the time being in force.

97. When two or more of the separate estates shall consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of lands, unless the recorded proprietors of the equal shares shall agree among themselves as to the allotment of the equal separate estates and shall present a petition to that effect ; or unless for any other reason the Deputy Collector shall, with the sanction of the Collector, think proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

98. When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate ;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn ;

and may cause lots to be drawn in like manner as often as he shall think proper for such purpose.

And after lots shall have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance their objection in respect of the papers accepted as the basis of the partition and in respect of the

assets of the different lands as stated in such papers, and until any such objections which may have been made shall have been disposed of.

Illustrations.

I.—The partition of a parent estate is being made into the following shares : —

8 annas.
4 annas.
3 annas.
1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas, and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 1 annas share on the one hand, and the proprietors of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares : —

6 annas.
4 annas.
1 annas.
2 annas.
1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share, and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining sharers ; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 1 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot ; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

99. The Deputy Collector may, by a notice served as provided in section one hundred and thirty-five, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding sections, to attend at the office of the Deputy Collector in person or by authorized agent at a time to be fixed by the Deputy Collector for the purpose of drawing lots;

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf; and if at the time fixed for drawing such lots such proprietors have failed to agree to any such joint appointment, or shall fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

100. Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector under the last preceding section, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

Rules applicable to the formation into separate estates of lands which are held by proprietors in severalty.

101. Whenever in any parent estate a division of the lands thereof has been made by private arrangement of the proprietors of such estate, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in such parent estate, the joint application presented to the Collector by all the recorded proprietors of such estate as required by section twelve may be to the effect that a partition of such estate be made by assigning to each proprietor or to two or more proprietors jointly as his or their separate estate, the lands of which they are in separate possession in accordance with such arrangement, and also that each separate estate so formed be made liable for such portion of the entire land-revenue of the

parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

102. The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form are sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable; and if the Deputy Collector be satisfied that, in this respect, and with reference to all the circumstances of the case, the partition of the lands and the assessment of the revenue thereon may be made in the manner proposed without endangering the safety of the revenue, the Deputy Collector shall submit the case with his opinion thereon, and the reasons on which such opinion is founded, to the Collector, who may admit or reject the said application.

103. If the Collector admits the said application, such admission shall be deemed to be the Collector's approval of the general arrangement of the partition as provided in section seventy-five, and the Deputy Collector shall proceed to complete the partition accordingly.

104. If the Deputy Collector, who is appointed to carry out the partition in accordance with a joint application under section one hundred and one, is not satisfied that the partition of the lands and the assessment of the revenue payable thereon can be made in the manner proposed without endangering the safety of the public revenue, or if the Collector rejects the application for such partition, the Deputy Collector shall refuse to make the same.

The proprietors of an estate may make an amicable partition binding on themselves, though not on the Collector.—18 W. R., 327.

105. Whenever the proprietors of an estate are, in accordance with a private arrangement as aforesaid, respectively in possession of separate lands held in severalty as representing their respective interests in the estate, the joint application presented to the Collector by all the

Joint petition may be presented for partition of land in accordance with private division, with proportional redistribution of public revenue.

recorded proprietors of the estate, as required by section twelve, may be to the effect that a partition of such estate be made by assigning to each proprietor, or to two or more proprietors jointly, as his or their separate estate, the lands of which they are in possession in accordance with such arrangement, and that the land-revenue for which the parent estate is liable may be apportioned among the separate estates so formed in accordance with the provisions of section six.

A joint application under this section may be made notwithstanding that a joint application under section one hundred and one has been refused in respect of the same estate.

106. Whenever the Deputy Collector who is appointed to carry out a partition shall find that, in accordance with a private arrangement made by the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate lands held in severalty as representing portions only of their respective interests in the parent estate, while other lands of the parent estate are held in common tenancy between such proprietors, a joint application as mentioned in section twelve shall not be necessary to authorize the Collector to make a partition of the estate, but the Deputy Collector shall allot to the separate estate of each proprietor the lands of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands held in the occupation of the several proprietors of an estate as *sir*, *khamar*, or *nij-jote*, or under any other similar denomination, shall not be deemed to be lands held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bond fide* division, by private arrangement, among the proprietors, of lands held by tenants.

107. Notwithstanding anything contained in the last preceding section, the Collector may cause any transfer of lands agreed to by the parties to be made from the possession of one proprietor to that of another.

Rules applicable both to lands held in common tenancy and to lands held in severalty.

108. Places of worship, burning grounds, and burial grounds, which have been held in common previous to the partition of an estate, and lands of which the proceeds have been assigned by the proprietors jointly for religious, charitable, or public purposes, shall continue to be held in common, unless the proprietors shall otherwise agree amongst themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

109. Tanks, wells, watercourses, and embankments shall be considered as attached to the land for the benefit of which they were originally made.

In cases in which, from the extent, situation, or construction of such works it shall be found necessary that they should remain the joint property of the proprietors of two or more of the separate estates, the paper of partition shall specify, as far as the circumstances may admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

It was held by the Sudder Dewany Adalat that the means of irrigation, which were common to all the cultivators of a village when that village was held jointly by two proprietors, were not affected by the division of the village into two distinct portions according to the respective shares of those proprietors; neither could one proprietor stop the flow of water to the lands of the other, in consequence of the channel formerly used for that purpose running through the lands now held exclusively by one of them.—S. D. A., 1860, p. 554.

110. Whenever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall make no division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are left apper-

taining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate.

Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the recorded proprietors of the parent estate, but not otherwise.

111. Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patni or other permanent intermediate tenure falling within Exception 2 or Exception 3 of section seven, the Deputy Collector may either

Rule as to permanent intermediate tenures.

(1) assign the lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in Exception 2 or in Exception 3 (as the case may be) of section seven; or

(2) leave such lands unassigned to any separate estate, and specify in the partition paper and proceedings that the lands are left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate. In the event of such lands being so left undivided, the Deputy Collector shall assign to each separate estate such share of the rental of the tenure as shall bear the same proportion to the entire rental of the tenure, as the separate estate bears to the parent estate.

In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the lands comprised in the tenure, and all other circumstances of the case.

112. Whenever any lands are held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands; and all the provisions of this Act in

Lands held in common between the proprietors of two or more estates how to be dealt with.

respect of the allotment between the shareholders in one estate, of lands which are held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common lands to the estate under partition;

and, in respect of the service of notices, hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and the proprietors of all other estates who have an interest in the said common lands, shall be deemed to be joint proprietors of a parent estate consisting only of the lands so held in common.

Provided that all expenses of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be expenses of making the partition of the estate which is under partition, and shall be leviable as provided by this Act from the proprietors of such estate, and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such expenses.

113. Notwithstanding anything contained in the last preceding section, if it shall appear to the Commissioner, on the report of the Collector or otherwise, that the proceedings for such division have been unnecessarily delayed, and the cost of such division enhanced by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisitions made upon him, the Commissioner may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost, and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

114. The allotment to the estate under partition of the proportionate share of the lands so held in common shall be submitted for the approval of the Collector, who

Allotment of lands held in common to be sanctioned by Collector.

may confirm, amend, or reject the same, and, in the case of rejection, may make or direct to be made another allotment.

115. As soon as the allotment to the estate under partition of a proportionate share of the said lands shall have been approved by the Collector, the lands so allotted shall be dealt with in every respect as if they were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common lands.

116. If a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of possession, and shall report his conclusions, with the reasons thereof, to the Collector; whereupon

the Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file, and in that case no application for a partition of the said estate shall be admitted until the applicant can show that the dispute or doubt has been decided by a Court of competent jurisdiction, or has been amicably settled;

or, if the Collector shall find that possession of the disputed lands is with the proprietors of the parent estate, and if it shall appear to him that the claim of the other parties to the right in such lands is untenable, he may order that the partition shall proceed, and that the disputed lands be treated as part of the estate under partition.

Provided that no partition shall be made under this section, if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

117. If, after a partition has been completed in accordance

Procedure when partition completed and proprietor of an estate dispossessed by order of a competent Court.

with an order passed by the Collector under clause three of the last preceding section, the proprietor of any separate estate shall be dispossessed by a decree of a Court of competent jurisdiction of any lands which may have been assigned to his estate by the partition, such proprietor shall not be entitled to claim any modification of the partition (which shall hold good), but shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the order of dispossession does not fall.

PART IX.

OF THE PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF THE PARTITION.

118. If no appeal or objection shall be presented within

If no appeal presented, Commissioner may consider the case without issue of notice.

the time allowed by section eighty-four, the Commissioner may proceed to consider the case without issue of any notice, and may confirm the partition made by the Collector.

tion made by the Collector.

119. If it shall appear to the Commissioner that the

proceedings of the Collector should be amended, or if a petition of appeal or an objection shall have been pre-

sented within the time allowed by section eighty-four, the Commissioner shall fix a day for hearing and disposing of the case, and shall cause a notification of the same to be published and a notice of the same to be posted up in his own office.

120. On the day so fixed, which shall not be less than thirty days after the publication of the said notification at the office of the Collector, or on any subsequent day to which the hearing of the case may extend, or on any subsequent day to which the hearing may have been postponed by a notice published in his own office, the Commissioner shall, after hearing and disposing of all objections, and calling for any further information which may be necessary, either confirm the partition as made by the Collector or amend the same, or return the papers of the partition to the Collector for any changes the Commissioner may think proper to be made.

If the partition is returned to the Collector for amendment, the Collector shall proceed to make the said amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector.

121. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he shall think fit, and as often as he shall so return them the procedure prescribed in the three last preceding sections shall be followed.

122. After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or, if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board determining that the partition as sanctioned by the Commissioner shall not be disturbed, the Collector shall cause to be published in his office, and in some conspicuous place in each of the estates separately constituted by such order, a notice that the partition has been finally confirmed as it was sanctioned by the Commissioner, or with any amendments or alterations, as the case may be.

If the partition as finally sanctioned involves any amend-

ments which may conveniently be made on the extracts of the partition paper and on any maps which have been prepared and delivered or offered by notice to the recorded proprietors as required by section seventy-nine or section eighty-five, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and if the alterations made in the partition as finally sanctioned be such as to make it desirable to prepare fresh extracts and maps as aforesaid, the Collector shall cause such fresh extracts and maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which were furnished or offered to him under section seventy-nine or section eighty-five, as the case may be, to be cancelled, and requiring him to take out of the Collector's office the fresh extract and map which have been prepared.

123. The Collector shall then proceed to give the
Procedure as to giving possession of separate estates. several proprietors possession of the separate estates allotted to each, and, if necessary, may require the assistance of the Magistrate in giving such possession ;

and shall cause to be served on every recorded proprietor of a separate estate a notice informing him that, from the date specified in such notice, the separate estate assigned to him (as described in the extract from the partition paper prepared and delivered or offered to him under section seventy-nine, section eighty-five, or the last preceding section, as the case may be) will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in such notice, and calling upon him to enter into a separate engagement for the payment of such revenue.

124. The date specified in such notice shall not be
Dates specified in notice under preceding section. more than three months after the proprietors have been put in possession of their respective separate estates as herein provided.

125. From the date specified in such notice, each separate estate shall be borne on the Revenue Roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this Act; and shall be so liable, whether the proprietor have executed an agreement for the payment of the amount of land-revenue so assessed upon the said estate, or whether he shall have failed to execute such agreement.

126. The Collector may direct the construction of such boundary-marks as he may think proper to distinguish the lands of each separate estate, and the cost of such boundary-marks shall be deemed to be expenses of the partition.

Boundary-marks erected under this Act shall be assigned to zemindars, or to zemindars jointly with tenureholders, for preservation, as provided in the second clause of section 29 of "The Bengal Survey Act, 1875," and after they have been so assigned, the provisions of sections 19, 20, and 52 to 57 (both inclusive) of the said Act shall apply to such boundary-marks.

PART X.

MISCELLANEOUS.

127. The Deputy Collector, with the consent of all parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections sixty-five and sixty-seven shall, as far as possible, be applicable to such references.

128. If any proprietor of an estate held in common tenancy and brought under partition in accordance with the provisions of this Act shall have given his share or a portion of it in patni or other tenure or lease, such tenure or lease shall hold good, as regards the lands finally allotted to the share of the lessor, and only as to such lands.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B. as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every ryot on the estate ;

Partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate ;

B will become patnidar of the entire separate estate which has been assigned to A. and will be entitled to collect the whole of the rents from the ryots on that estate.

II.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every ryot on the estate :

Partition of the estate is made under the Act, and certain specific lands are assigned to A as his separate estate :

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every ryot on A's estate, and A will be entitled to collect the other half.

129. If two or more estates shall come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors, after being recorded as proprietors, may apply to have such estates united, and to hold them as a single estate.

130. Such application shall be made in writing to the Collector, and the Collector shall, not less than thirty days after the issue of a notification of such application (provided he see no objection), comply with the same, and cause the necessary entries to be made in the records of his office, and shall report the case to the Commissioner.

131. Whenever any separate estate created under this Act shall fall in arrear so as to require a sale of the land for the discharge of the arrear at any period within twelve years of the date of the confirmation of the partition, the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether such arrear has been caused by any fraudulent or erroneous allotment of the

assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

132. If it shall be proved to the satisfaction of the Lieutenant-Governor, at any time within twelve years from the date of the final confirmation of a partition by the Commissioner or by the Board, as the case may be, that, through any fraud or error at the time of making the partition, the assets of the lands assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate, the Lieutenant-Governor may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable respecting the same.

133. Whenever the Lieutenant-Governor shall pass an order for the re-allotment of the land-revenue on any separate estate under the preceding section, the Lieutenant-Governor may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter shall be found to have been over-assessed, and in default of payment the amount shall be leviable as provided in section one hundred and thirty-eight.

No order passed by the Lieutenant-Governor under this section shall be liable to be contested in any Court.

134. Every notification required to be published in and by this Act shall, unless it is otherwise specially directed, be published by posting up copies of the same at

In certain cases Lieutenant-Governor may order a new allotment of the land-revenue.

Under - assessed estates to make refund to over-assessed estates.

Publication of notifications under this Act.

the office of the Collector, and of the Deputy Collector who is making or has made the partition, at the māl cutcherry or māl cutcherries (if any) of the proprietors of the parent estate, and at one or more of the principal villages on the said estate.

135. Every notice in and by this
 Service of notice. Act required to be served on any
 person may be served—

(1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides,

or by delivering the said notice to a general agent of the person to whom such notice is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or

(2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to be residing; or

(3) by posting a copy of the notice at any māl cutcherry of the person to whom the notice is directed,

or, if no such māl cutcherry be found, and if the notice cannot be served in any of the other modes mentioned in this section, on some conspicuous place on the estate to which such notice relates.

In all cases where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, service of notice under this section on any one of such joint applicants shall be deemed to be good and sufficient service on each and all of such joint applicants.

136. Provided the directions of this Act be in substance
 No proceedings under this Act to be affected by any mistake or misdescription. and effect complied with, no proceedings under this Act shall be affected by reason of any mistake or by reason of any other informality, unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality;
 and no proceedings under this Act shall be affected by

reason of the omission to issue any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required to be served.

137. If any proprietor or other person shall fail to comply, within the time fixed by a notice served on him as by this Act provided, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees ;

and such fine shall be payable daily until the requisition is complied with,

and the Collector or Deputy Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending ;

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by the authority of the Commissioner.

138. Except as herein expressly otherwise provided, all fees, fines, costs, and other sums ordered to be paid by any person under this Act, shall be deemed to be demands under section 1 of Bengal

Fees, &c., to be deemed a demand under Bengal Act VII of 1868.

Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue*), and shall be leviable as such.

See Act VII, 1880 (B.C.)

139. For the purpose of any enquiry under this Act, the Collector and Deputy Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses, to examine witnesses, and to

Power of Collector to enforce attendance of witnesses.

compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a Court under the Code of Civil Procedure.

140. All powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector; and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, if such act shall have been done or such order shall have been made by the Collector, it shall be deemed to have been sanctioned by the Collector, or to have been confirmed by the Collector in appeal, as the case may be.

141. The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of the parent estate.

Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

142. An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector,

(a) directing, under section forty-one, by whom the costs of an enquiry held in consequence of an objection preferred shall be paid;

(b) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(c) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators;

(d) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity;

(e) refusing, under section one hundred and four, to make a partition as applied for by the joint applicants;

(*f*) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure ;

(*g*) imposing a fine under section one hundred and thirty-seven.

143. An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of the Collector (whether such order be passed by the Collector in the first instance, or in appeal from the order of a Deputy Collector),

Appeal to the Commissioner.

(*a*) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(*b*) directing, under section thirty-one, that an application for partition or separation be admitted ;

(*c*) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(*d*) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators ;

(*e*) setting aside, amending, or approving the general arrangement of the partition under section seventy-five ;

(*f*) approving, with or without amendment, a partition made by a Deputy Collector, or directing such partition to be amended or a fresh partition to be made, or making a fresh partition under section eighty-one ;

(*g*) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity ;

(*h*) refusing, under section one hundred and two, to allow a partition to be made in accordance with an existing private division ;

(*i*) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure ;

(*h*) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition

of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates ;

(*l*) passed under section one hundred and sixteen as to disputes or doubts regarding land ;

(*m*) imposing or confirming the imposition of a fine under section one hundred and thirty-seven ;

(*n*) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

144. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner which confirms, modifies, or reverses any order of the Collector,

(*a*) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(*b*) directing, under section thirty-one, that an application for partition or separation be admitted ;

(*c*) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(*d*) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates ;

and against every order of the Commissioner

(*e*) directing, under section forty, that any proprietor shall pay more than his proportionate share of the expenses of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;

(*f*) directing, under section one hundred and thirteen, that any sum shall be paid by the proprietor of an estate other than the estate under partition, when such sum exceeds five hundred rupees ;

(*g*) confirming, under section one hundred and eighteen, or section one hundred and twenty, or amending or set-

ting aside under section one hundred and twenty, a partition as made by the Collector ;

(j) imposing, or confirming the imposition of any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

145. Except as provided in the three last preceding sections, no appeal shall lie as of right against any order passed under this Act by any officer ; but the proceedings and orders of every Deputy Collector under this Act shall be subject to the supervision and control of the Collector ; the proceedings and orders of every Deputy Collector and of the Collector, to the supervision and control of the Commissioner ; and the proceedings and orders of all Revenue Officers, to the supervision and control of the Board ;

and any order passed and anything done under this Act may be modified, amended, or reversed by the supervising and controlling authority at any time before possession of their respective separate estates has been given to the several proprietors as provided in section one hundred and twenty-three, but not after such possession has been given, except as provided in the next succeeding section.

146. Any proceedings of a Revenue Officer connected with giving possession to the proprietors of their respective separate estates as provided in section one hundred and twenty-three may be set aside or amended as above provided by any supervising and controlling Revenue Authority, provided that such supervising and controlling authority shall, within three months of the date on which such possession may have been given, make an order to the effect that such proceedings are under the consideration of such authority.

Such order shall be communicated to the Collector of the district, who shall cause the same to be published by notification in the manner prescribed by section one hundred and thirty-four.

147. The Commissioner and the Board may pass such orders as they shall think fit in respect of the payment of costs of any appeal which is made to them respectively under this Act.

Orders as to costs on appeal.

148. If, in any case in which a Collector or other officer shall exercise jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same, as are vested by the Code of Criminal Procedure in a Civil Court, when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

Powers of officers exercising jurisdiction under this Act with regard to false evidence.

Orders of Revenue Officer which are not liable to be set aside by civil suit.

149. No order of a Revenue Officer

(a) refusing to allow a partition on the grounds mentioned in section eleven;

(b) rejecting or directing to be amended an application under section twenty;

(c) made under the first clause of section thirty-two;

(d) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section), or Part IX;

(e) imposing a fine;

(f) in respect of the payment of costs of any appeal under section one hundred and forty-seven,

shall be liable to be contested or set aside by a suit in any Court, or in any manner other than as is expressly provided in this Act.

The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Reg. XIX of 1814 (now repealed), and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands, and for

a re-distribution of the shares.—*Held*, the Court had no jurisdiction to entertain a suit to alter a partition effected by the Revenue Authorities. *Held* also, in accordance with the principles laid down by the Privy Council in *Byjnath Lall v. Ramudin Chowdri* (21 W. R. 233), viz., that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the other co-sharers, but his assignee takes subject to their rights; that the plaintiffs were not entitled to the relief they sought for, and their suit must be dismissed. I L. R., 4 Calc., 510.

When suit may be brought to set aside order of Revenue Officer. 150. Notwithstanding anything contained in clause (d) of the last preceding section,

any person claiming a greater interest in any lands which were held in common tenancy between two or more estates than has been assigned to him by the order of a Revenue Officer under section one hundred and twelve or section one hundred and fourteen ;

and any person who is aggrieved by any order of a Revenue Officer passed under section one hundred and sixteen ;

may bring a suit in a Court of competent jurisdiction to modify or set aside such orders of the Revenue Officer.

It had been ruled under Reg. XIX of 1814 that there is nothing in batwara law to prevent the Civil Court from entertaining a suit for declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. 6 B. L. R., 658 ; 8 B. L. R., 72, App.

151. In the execution of the duties vested in the Board
Board to be guided by instructions of Lieutenant-Governor. by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor.

Board may lay down rules. 152. The Board may, from time to time, make rules, not being inconsistent with this Act—

(a) to regulate the expenses of effecting partitions, or the amount of fees to be levied in respect of partitions, the allotment of the same among the proprietors, and the instalments in which, and the times at which, the same shall be levied under Part IV ;

(b) to regulate the receipts, disbursements, and management of any " Estates' Partition Fund " formed under section forty-five ;

(c) to regulate the employment and remuneration of amins and other subordinate officers appointed under Part IV, to enable the officer making the partition to keep himself informed of the proceedings of such officers, and to exercise a proper control over them ;

(d) to regulate the form in which the partition papers shall be framed under section sixty-six and section seventy-seven ;

(e) and generally for the guidance of officers in conducting partitions under this Act.

SCHEDULE.

(Sec Section 2.)

Number and year.	Subject or abbreviated title.	Extent of repeal.
Regulation XI of 1811 ...	For extending period of revising jama on certain lands.	So much as has not been repealed.
Regulation XIX of 1814	Consolidating regulations respecting partition of estates.	Ditto.
Act XX of 1836 ...	Quashing of batwaras	Ditto.
Act XI of 1838 ...	Remuneration of persons effecting a partition.	Ditto.

PART XVIII. Public Demands Recovery.

REGULATION III OF 1794.

A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which Tahsildárs are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain; and for expediting the trial of causes relating to the public revenue or the rents of individuals.

It has been considered unnecessary to print Reg. III of 1794, as s. 12 has been absolutely repealed, and ss. 16 to 20 have been repealed so far as they relate to the recovery of money belonging to Government (see first Schedule to Act VII, 1880, B. C.) Sec. 14 being also repealed by Act VII of 1868, B. C.

ACT No. VII (B. C.) OF 1868.*

(As amended by Acts II (B. C.), 1871, and VII (B. C.), 1880.

An Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue.

WHEREAS it is expedient to amend and extend the law for the recovery of arrears of land-revenue and of public demands recoverable as arrears of land-revenue: It is declared and enacted as follows:—

1. In this Act and in Act XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), the words in this section mentioned shall have the meanings therein attributed to them respectively.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

The word ‘proprietor’ includes any tenant by whom
 ‘Proprietor.’ any estate or tenure is held directly
 under Government.

The word ‘revenue’ includes every sum annually
 ‘Revenue.’ payable to Government by the pro-
 prietor of any estate or tenure in
 respect thereof, and every sum payable to Government in
 respect of tuccavee, or of any money advanced by Govern-
 ment to proprietors of land for making or repairing
 embankments, reservoirs, or watercourses, or other im-
 provements on the land held by them.

The word ‘Estate’ means any land or share in land
 ‘Estate.’ subject to the payment to Government
 of an annual sum in respect of which
 the name of a proprietor is entered on the Register known
 as the General Register of all revenue-paying estates, or
 in respect of which a separate account may, in pursuance
 of section 10 or section 11 of the said Act XI of 1859,
 have been opened.

The word ‘Tenure’ includes all interests in land,
 ‘Tenure.’ whether rent-paying or lakhiraj other
 than estates as above defined, and all
 fisheries, which, by the terms of the grants creating the
 same, or by the custom of the country, are transferable,
 whether such tenures are resumable or not, and whether the
 right of selling or bringing them to sale for an arrear of
 rent may or may not have been especially reserved by
 stipulation in any instrument.

The ‘jurisdiction’ of a Collector means the District to
 ‘Jurisdiction.’ which such Collector is appointed, or
 throughout which any officer vested
 with the powers of a Collector is authorized to exercise
 such powers.

The word “Collector” includes any person vested with
 ‘Collector.’ the powers of a Collector.

The remaining portion of the section is repealed by Act VII (B. C.) of
 1880, sched. i, col. 3.

2. It shall be lawful for the Commissioner of Revenue
 Appeals against sales. to receive an appeal against any sale
 made under this Act, or the said

Act XI of 1859, so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act XI of 1859, or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor; such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office: and the order of the Commissioner shall in such cases be final.

As amended by Act VII (B. C.) of 1880, sched. i, col. 3.

3. From the date when this Act comes into operation, the word 'thirty' shall be substituted for the word 'fifteen' in section 6 of the said Act XI of 1859, and the words 'or more than thirty' in the same section shall be omitted therefrom, and the said section shall be read as if the same had not been inserted therein.

4. From the date when this Act comes into operation, the words 'sixtieth' and 'sixty' shall be substituted for the words 'thirtieth' and 'thirty' respectively, wherever the said words occur in section 27 of the said Act XI of 1859.

5. Every notice in and by this Act, or by the said Act XI of 1859, directed to be served, shall be served by delivering to the person to whom it may be directed, a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, to

some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last-known place of abode of such person. In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

6. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the *Calcutta Gazette*, to empower all Collectors in any District in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors before proceeding under the provisions of the said Act XI of 1859 or of this Act, to realize from such proprietors any arrears of revenue which may be due from such proprietors and the costs of serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue which may be due from such proprietors, and shall be recoverable as if the same were a portion of such arrears of revenue; and every such order may from time to time be altered, varied, or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

As amended by Act VII (B. C.) of 1880, sched. i, col. 3.

7. In addition to the notices in and by section 7 of the said Act XI of 1859 directed to be posted, a similar notice shall be posted at the Subdivisional Cutcherry within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act XI of 1859, or of section 11 of this Act, shall be conclusive evidence, in favor of such purchaser and of every person claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, required to be served or posted, have been duly served and

posted ; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. All sales of lands of lakhiraj tenure, which may heretofore have been made in conformity with the procedure established by the said Act XI of 1859, for payment of arrears of revenue or of demands, shall have such and the same force and effect as if they had been made in execution of a decree against the person liable to pay the revenue or demand for satisfaction of which such sale may have been made.

10. Every estate shall, for the purposes of this Act and of the said Act XI of 1859, be deemed to be within the collectorate of the Collector upon whose General Register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction ; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the collectorate of any other Collector.

11. Whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue, and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate ; and

every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act XI of 1859 with respect to estates. Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received shall have been fixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act XI of 1859, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police Thannah of the division in which the tenure to which the notification relates is situated, or if the tenure be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannahs, and also at the Cutcherry of the malgoozar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

As amended by Act II (B. C.) of 1871.

12. The purchaser of any tenure sold under the provisions of section 11 of this Act shall acquire it free from all encumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

First.—Istemraree or mookurruree tenures which have been held at a fixed rent from the time of the Permanent Settlement.

Secondly.—Tenures existing at the time of Permanent Settlement, which have not been held at a fixed rent.

Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Tenures created or recognized by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

Fourthly.—Tenures of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

A person seeking to obtain the benefit of s. 12. Beng. Act VII of 1868, must give some *prima facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the sections,—that is, an incumbrance imposed on the tenure by some one who previously held it.—I. L. R., 8 Cal., 230.

Unless growing crops are excepted by the notification of sale, or there is any custom proved to the contrary, the purchaser at an auction-sale is entitled to the crops growing on the lands purchased by him.—4 C. L. R., 95.

13. Every purchaser of a tenure under section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser under section 11 of this Act to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

15 to 28. [*Repealed by Act VII (B. C.) of 1880, sched. i, col. 3.*]

29. From and after the passing of this Act, the Acts and Regulations and portions of Acts and Regulations in Schedule (E) set forth shall stand and be repealed, so far as they are in such schedule mentioned to be repealed.

30. This Act shall be read with, and taken as part of, the said Act XI of 1859, as modified by Act III of 1862 of the Lieutenant-Governor of Bengal in Council.

SCHEDULES A to D.—*Repealed.*

SCHEDULE E.—(*Referred to in section 29.*)

Date and number of Regulation or Act.	Title of Regulation or Act.	Extent of repeal.
Regulation XIV of 1793 ...	A Regulation for the recovery of arrears of the public revenue assessed upon the lands, from zemmdars, independent talookdars, and other actual proprietors of land, and farmers of land holding farms immediately of Government.	Section 44.
Regulation III of 1794 ...	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue, and for prescribing the process by which Tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain; and for expediting the trial of causes relating to the public revenue or the rents of individuals.	Section 14.
Regulation VII of 1799 ...	A Regulation for enabling proprietors and farmers of land to realize their rents with greater punctuality, for providing against unnecessary delay in the payment of the public revenue assessed upon the lands, and for securing the ultimate recovery of arrears of revenue by a sale of landed property from which it may be due at the close of the year.	Section 23, clauses 2 and 8, and so much of clause 5 as directs the mode of recovering any deficiency; and section 25.

SCHEDULE E.—

Date and number of Regulation or Act.	Title of Regulation or Act.	Extent of repeal.
Act XI of 1859	... An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.	Section 25.

ACT No. VII (B. C.) OF 1880.

An Act to amend the Law for the Recovery of certain Public Demands.

WHEREAS it is expedient to amend the law for the recovery of cert in dues and debts demandable by Public Officers; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called “The Public Demands Recovery Act, 1880.”

Extent.

Notwithstanding anything contained in section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor General.

Construction of this Act.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

3. The Acts specified in the first Schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that Schedule: provided that this repeal shall not affect—

(a) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder :

(b) any liability created under any enactment hereby repealed.

Every certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

4. In this Act, unless the context otherwise requires, but not in the other Acts mentioned in section 2,

‘Section’ means a section of this Act.

‘Collector’ means (a) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort

William in Bengal, the Collector of Calcutta ; (b) without those limits, the Collector of a District or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act ; and (c) any officer in charge of a subdivision of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

5. In the following cases, that is to say—

(1) when, under the provisions of Act XI of 1859, passed by the Governor General in Council, or of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, an estate or tenure has been sold for the recovery of arrears of revenue due thereupon,

When an estate or tenure has been sold for its own arrears ; and the sale-proceeds are insufficient to liquidate the same ; or

and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied ;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section 3 of Act XI of 1859, passed by the Governor-General in Council;

when arrears of revenue due from a farmer are not paid on latest date of payment;

the Collector may make under his hand, and in form No. 1 in the second Schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

6. (a) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

(b) Such judgment-debtor may, at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate. Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate. Such suit shall have the said certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

If no such suit brought within one year, or if brought and decided against judgment-debtor, the certificate to become absolute, and have effect of a decree of the Civil Court to all intents and purposes.

(c) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted is decided against such judgment-debtor, such certificate shall become absolute and shall have, to all intents and purposes, the effect of a final decree of a Civil Court.

When any arrear of a public demand is unpaid by the person liable to pay the same, 7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say—

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue :

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him :

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, section 9; in Act VI of 1873, section 50; in Act IV of 1875, section 1; in Act V of 1875, section 57; in Act III of 1876, section 42, section 73, and section 85; in Act VII of 1876, section 82; in Act VIII of 1876, section 138; in Act VII of 1878, section 36: or in the following sections and portions of the following Act passed by the Governor General in Council, that is to say—in Act VII of 1870, “The Court-Fees Act,” sections 19*g*, 19*h*, and the note to paragraph 12 of Schedule I:

(4) in the case of a person to whom the collection of tolls has been farmed under the provisions of section 8 of “The Canals Act, 1864,” or of the sureties of such person—any sum of money due in respect of farm:

(5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, section 10:

(6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any ryot, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable:

(7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of

Wards or the Revenue Authorities on behalf of a private individual — any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such Court or such Authorities: provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court:

(8) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:

(9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

the Collector of the District may make under his hand, and in Form No. 2 in the second Schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

8. (a) Subject to the provisions of this Act, every certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (7) mentioned in the said section 7, the Secretary of State for India in Council and in the said case (7) the private individual therein mentioned, or, if such private individual be a minor, lunatic or ward of Court, then such minor, lunatic, or ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

(b) Such judgment-debtor may, at any time within one year after the service upon him of such

Judgment - debtor may bring a suit in the Civil Court to contest the certificate. If no such suit within one year, or if brought and decided against the judgment-debtor, certificate to become absolute.

notice as is mentioned in section 10, bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled: but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Col-

lector under section 12 the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have, to all intents and purposes, the same force and effect as a final decree of a Civil Court.

Provided that no certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the certificate was actually paid or discharged before the making of such certificate:

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceeding of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that, in consequence, the judgment-debtor, under the certificate, suffered substantial injury from some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the certificate was not due by the judgment-debtor under the certificate:

(4) want of jurisdiction.

Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court

at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

The proclamation of sale required by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290.

It was shown that the proclamation of sale on the property had taken place only five days prior to the date of sale, and the particulars of a mortgage had not been given. *Held*, that there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities.

Held also, that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon as to the proclamation of sale, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done owing to illness.

Held also, that a third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with and his decree satisfied under the provisions of s. 295.—I. L. R., 7 Calc., 34 ; 3 W. R. (Mis.), 11 ; 4 W. R. (Mis.), 4 ; 10 W. R., 3, followed.

At the time when a zemindari came under khas management, arrears of rent were due by the plaintiff to the zemindar. The Settlement-Officer issued a certificate against the plaintiff under s. 19 of Beng. Act VII of 1868, requiring him to pay these arrears. The plaintiff at first objected, but subsequently withdrew his objection and paid.

Held, that a suit to recover the amount paid to Government brought on the ground that that amount was really payable to the zemindar, would not lie. *Quære*.—Whether such a suit would lie, if the plaintiff were compelled to pay again to the zemindar?—I. L. R., 5 Calc., 325.

9. (a) When any arrear of any of the public demands specified in section 7 is unpaid

In case of arrears of public demand payable to Officer other than Collectors, such officer may give notice to Collector.

by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may give to the Collector of the District, in which such person resides, or in which such demand is payable, a notice in writing in Form No. 3 in the second Schedule annexed to this Act : provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

(b) Every such notice given by a Manager shall be

Such notice given by a Manager to be verified and stamped as a plaint.

verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court-Fees Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

(c) On receipt of such notice, such Collector, if satis-

Collector may, on receipt of such notice, make a certificate.

fied that such demand is justly recoverable, may make under his hand, and in the Form No. 2 in the second Schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

(d) The provisions of section 8 shall apply to every such certificate.

10. When a certificate has been filed in the office of a

When certificate filed notice to be given to judgment-debtor. Upon service of notice, certificate to bind immovable property of judgment-debtor.

Collector under the provisions of section 5, or section 7, or section 9, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in Form No. 4 in the second Schedule annexed to this

Act. From and after the service of such notice, such certificate shall bind all immovable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immovable property had been attached under the provisions of section 274 of the Code of Civil Procedure.

A copy of such certificate may be transmitted by post

Copy of certificate may be sent to Collector of another district to be filed in his office; and upon its being filed, certificate shall bind immovable property situate in such district.

to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice has been served, bind in like manner all immovable property of such judgment-debtor situate within the jurisdiction of

such last-mentioned Collector.

11. If in any case other than the case mentioned in clause (7) of section 7, the Collector

Movable property of person, against whom certificate has been made, may be attached at any time if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

is satisfied that any person against whom a certificate has been filed under the provisions of section 5, or section 7, or section 9, is likely to conceal, or remove, or dispose of the whole or any part of his movable property, and that the realization of

the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the movable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching movable property, and subject to the provisions of section 266 of the same Code. Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under section 12, or if any such petition is filed, then as soon as it has been heard and determined.

12. If any person, who has been served with a notice

Any person served with notice under section 10 may file a petition of objection.

under section 10, denies his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, he

may, at any time within thirty days after service of such notice, or where no such notice has been duly served, within thirty days after the execution of any process for enforcing such certificate, file a petition, denying his liability as aforesaid, before the Collector by whom such certificate has been made. Such petition shall be in, or as nearly as possible in, the Form No. 5 in the second Schedule annexed to this Act.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day,

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify

or vary the certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

14. The Collector shall have full power to direct that

Collector may direct costs of such petition to be paid by the petitioner.

the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a

Collector directs the payment of such costs by any such petitioner, the amount thereof shall, if such petitioner be the judgment-debtor, be added to the

Such costs how realized.

amount entered in the certificate, and shall be recoverable as if the same had been originally entered therein.

15. The Collector of a district may refer to any Deputy

Collector may refer petition for hearing to Deputy Collector, Assistant Commissioner, &c., who shall have the same powers to hear it as the Collector.

Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and deter-

mine such petition accordingly. The provisions of sections 13 and 14 shall be applicable to any such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner to whom any such petition has been so referred.

16. An appeal from any order of a Deputy Collector

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner.

or Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred

to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such

Stay of execution.

appeal, execution may be stayed, if the Appellate Authority so direct, but not otherwise.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner may, in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

18. Every certificate made under the provisions of section 5, or section 7, or section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in section 10, or when any such petition as is mentioned in section 12 has been filed, then as soon as such petition has been heard and determined.

19. Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, and all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by sale of immovable property under the provisions of sections 305, 320, 322, 323, and 324 of the said Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to execution; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder, save that all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate, or any copy thereof transmitted for execution under the provisions of section 223 of the said Code, has been filed. Subject to the control of the Collector and save and except

in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

A bailiff or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by s. 271 of the Code of Civil Procedure (Act X of 1877).—I. L. R., 3 Bomb., 89.

The Court (MELVILL and WEST, JJ.) remarked: "When Act X of 1877 was passed, it was settled law in this country that, although a bailiff might not break open the outer door of a dwelling-house, he might break open the door of a shop or godown.—8 Bom. H. C. Rep., 127; 5 B. L. R., Ap., 27; 13 W. R., 339. The Legislature, knowing this to be settled law, did not think it necessary to express its own view on the matter, but it may have deemed it desirable to state definitely that inner doors could be broken open."

When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside.

Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree,—

Held, that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would in fact be a purchase by an agent of the property of his principal.—I. L. R., 7 Cal., 316.

The words "any person whose immovable property has been sold" in s. 311 of Act XIV of 1882 do not include a person who has purchased the property in question at a previous sale in execution of a decree, but whose sale has not been confirmed.

The words refer to property *de facto*, and not to property *de jure*.—11 Bom. H. C. R., 15; and 10 C. L. R., 441.

Where a decree-holder, to whom leave had been given to bid at a sale in execution of his decree, discouraged bidders, the sale was set aside under s. 311 of the Code of Civil Procedure.—9 C. L. R., 263.

Where the certified purchaser admitted he was the *benamidar* of the plaintiff, and was made a *pro formâ* defendant, *held*, that a suit to obtain possession of property purchased at an execution-sale was not barred by s. 317 of Code of Civil Procedure.—9 C. L. R., 295, following rule in 10 B. L. R., 159.

Where there has been irregularity in conducting or publishing a sale, and an inadequate price has been obtained, the Court may presume that the injury was due to the irregularity.—9 C. L. R., 341.

A sale was objected to on the ground that the revenue assessed on the estate had not been stated in the proclamation of the intended sale in accordance with s. 287 of the Civil Procedure Code. The objection was disallowed as too late, it having been taken for the first time in the Court of Appeal. It was *held* by the Privy Council that if the objection had been properly taken in the Court of first instance, it

would have been good to the extent that not stating the amount of the revenue was an irregularity ; *substantial damage, resulting from it, remaining to be proved*, as required by s. 311 of Act X of 1877 (now XIV of 1882). It was *held*, further, that inadequacy of price having been alleged as substantial damage, *without having been proved to be the effect of the non-statement* of the revenue, the applicant had not (as required by s. 311) proved, to the satisfaction of the Court, that he had sustained substantial damage *by reason of the irregularity*. *Per* Lord Fitzgerald. Sir B. Peacock, Sir R. Couch, and Sir A. Hobhouse. I. L. R., 9 Calc., 656.

20. If any immovable property is sold in execution of a certificate under the provisions of section 18, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immovable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

Sale of immovable property may be set aside, if certificate is set aside by a competent Court.

Proviso.

21. Every Collector shall cause to be kept in his office a Register in such form as may from time to time be prescribed by Board of Revenue, and shall cause to be entered in such Register the particulars of every certificate made under this Act, which, or a copy of which, has been filed in his office. Such Register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Register of certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

22. (a) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct. The payment of any instalment shall be entered in the Register mentioned in section 21.

Payment of sum due under a certificate may be made by instalments. Payment of instalments to be entered in Register.

(b) When the total amount due under a certificate has been paid and satisfied, the Collector

When total amount satisfied, Collector to enter satisfaction on certificate and in Register ;

in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature ; and shall cause the same to be entered in the Register mentioned in section 21.

(c) When a copy of such certificate has been trans-

mitted to another Collector, or when such certificate has been made under the provisions of section 9 upon notice from a Public Officer other than a Collector or from a Manager

appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

(d) When a sum has been levied or received by a Col-

lector in respect of a certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

Sum levied by Collector to whom copy of certificate sent, to be transmitted to Collector who made certificate.

23. Every Collector, Deputy Collector, Assistant

Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner, and every such Public Officer as is mentioned in section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the Governor-General in Council.

Collector, Deputy Collector, Assistant Commissioner, Extra Assistant Commissioner and Public Officer to be deemed to be acting judicially in the discharge of his duties under this Act.

24. All Collectors, Deputy Collectors, Assistant Com-

missioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

FIRST SCHEDULE—See section 3.

Number and year.	Subject of Act.	Extent of repeal.
	<i>Acts passed by the Lieutenant-Governor of Bengal in Council.</i>	.
VIII of 1862...	An Act to improve the system of zemindari dâks in the provinces subject to the Government of Bengal.	In section 9 the words from and including "which said double amount" to and including "making default."
VII of 1868 ...	An Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue.	In section 1 from and including the words "The word 'Demand' means" to the end of the section. In section 2 the words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided."
		In section 6 the words "or persons liable to any demands," "or persons," "or any demands," "or persons," "or to any demands," "or persons," and "or of such demands."
		Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
VI of 1873 ...	An Act to amend the law relating to embankments and watercourses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875 ...	An Act for the realization of arrears in Government estates.	The whole Act.
IV of 1875 ...	An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.
V of 1875 ...	An Act to provide for the survey and demarcation of land.	In section 57, from and including the words "under section 2" to the end of the section.
III of 1876 ...	An Act to provide for irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section.

FIRST SCHEDULE—(continued).

Number and year.	Subject of Act	Extent of repeal.
III of 1876— <i>continued.</i>	<i>Acts passed by the Lieutenant-Governor of Bengal in Council.</i>	In section 73, from and including the words “under the provisions” to the end of the section. In section 85, from and including the words “under the provisions” to the end of the section.
VII of 1876 ...	An Act to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof.	In section 82, from and including the words “under section” to the end of the section.
VIII of 1876...	An Act to make better provision for the partition of estates.	In section 138, from and including the words “under section” to the end of the section.
VII of 1878 ...	An Act to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal.	In section 36, from and including the words “or by the process” to the end of the section.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Section 63.
III of 1794 ...	<i>Regulations of the Bengal code.</i> A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which Tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19, and 20, so far as they relate to the recovery of money belonging to Government.

SECOND SCHEDULE.

FORM NO. 1 (see section 5).

Certificate of Arrears of Revenue filed in the Office of the Collector of the District of (name of District).

No. of certificate.	Name of debtor.	Address of debtor.	Amount of arrears of revenue for which this certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council from the above-named

Dated this day of 18 . A. B.,
Collector of

FORM NO. 2 (see sections 7 and 9).

Certificate of Arrears of Public Demands filed in the Office of Collector of the District of (name of District).

No. of certificate.	Name of debtor.	Address of debtor.	Amount of the public demand for which this certificate is made.	Particulars of public demand for which this certificate is made; and Public Officer [or Manager, and of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council [or to A. B., a ward of Court, or a minor, or a lunatic, by his next friend C. D.] from the above-named A. B.

Dated this day of 18 . Collector of

FORM NO. 3 (see section 9).

NOTICE OF DEMAND.

To the Collector of the District of

Name of debtor.	Address of debtor.	Amount of public demand for which this notice is given.	Nature of the public demand for which this notice is given.

The above sum of Rs. is due from the said in
respect of
Certified this day of A. B.

FORM NO. 4 (see section 10).

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a certificate for Rs. due from you on account of has been this day made by me against you under the provisions of section of Act of 1880, passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may, within thirty days, show cause why such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immovable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the certificate above-mentioned is hereto annexed.

Dated this day of 18 . A. B.,
Collector of

FORM No. 5 (*see* section 12).

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a certificate, No. , for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880, passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (*or modified or varied*).

EXTRACTS

FROM

THE CIVIL PROCEDURE CODE

(ACT XIV OF 1882.)

278. If any claim be preferred to, or any objection

Investigation of claims to, and objections to attachment of, attached property. be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment,

the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

279. The claimant or objector must adduce evidence to show that, at the date of the attachment, he had some interest in, or was possessed of, the property attached.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property wholly or to such extent as it thinks fit, from attachment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

283. The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in

Saving of suits to establish right to attached property.

dispute, but subject to the result of such suit, if any, the order shall be conclusive.

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

G.—Of Sale and Delivery of Property.

(a.) General Rules.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale; and shall specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a 'High Court' within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

Rules for the guidance of the Courts in the exercise of their duties under Section 287 of the Code of Civil Procedure.

C. O. No. 31 of 30th August 1880.—(a) Whenever a Court shall, in the execution of a decree, make an order for the sale of any property under section 284 of the Code, it shall at the same time fix a date, not later than ten days after the date of such order, for settling the proclamation of sale. Notice of the date so fixed shall be given to the party or parties applying for the order of sale, and also to the judgment-debtor or judgment-debtors, or his or their respective Vakils.

(b) When immovable property is under attachment in execution of a decree, the party, or one of the parties, applying for the order of sale, shall, before he makes his application, cause search to be made in the office or offices of the Registrar or Sub-Registrars of Deeds, within whose circle or circles the property is situate, with a view to ascertain whether such property is subject to any, and, if so, what encumbrances. He shall further procure an extract from the register kept by the Collector under "The Land Registration Act," VII (B. C) of 1876, in any case in which the immovable property to be sold is the property of a proprietor as defined by such Act.

(c) Every application for an order for the sale of property in execution, whether movable or immovable, shall be supported by an affidavit to be made by the applicant or by some other person acquainted with the facts of the case, and to be verified in the manner prescribed by the Code for the verification of plaints, which affidavit shall state everything known or believed by the deponent to exist, which relates to the nature or affects the value of the property to be sold; and, if the deponent has no knowledge or belief on either of these matters, he shall in his affidavit set forth that, after making due enquiry into the matter, he has no knowledge or belief respecting the existence of either of such matters. Furthermore, whenever the application is for the sale of immovable property, the deponent shall state the result of the search hereinbefore directed to be made in the Registrar's office or offices, and shall also, if the property is a revenue-paying or rent-paying estate, set forth the revenue or rent payable in respect of such property; and if the immovable property belongs to a proprietor within the meaning of "The Land Registration Act," VII (B. C.) of 1876, he shall also append to his affidavit the extract from the Collector's register, which by the preceding rule he is directed to procure.

(d) The Court may, if for good reason dissatisfied with the affidavit of any deponent made under Rule 7 (c), require from such deponent a further affidavit respecting the matters as to which he is by such rule required to make an affidavit; and, if the deponent is other than the party at whose instance the application for an order of sale is made, the Court may also, for good reason, require such last-mentioned party himself to make an affidavit respecting any of such matters.

(e) On the day fixed for the settling of the proclamation, the Court shall enquire into the matters necessary to be specified therein, and shall, after reading the affidavit or affidavits, and examining any witnesses whom it may have thought necessary to summon, or whom, being present without being summoned, it may have thought necessary to examine, and, after considering any document which it may have required to be produced, settle the proclamation of sale, specifying, as fairly and accurately as possible, the matters required by section 287 of the Code to be specified; and the proclamation when so settled shall be signed by the Judicial Officer settling the same.

(f) If, when the proclamation is being settled, any of the parties to the suit in which the decree was passed is present, he shall be at liberty to put any relevant questions to any witness who may be examined by Court, whether such witness be a party to the suit or not, and may also cross-examine such witness if such witness gives evidence hostile to the interests of the examining party.

(g) Every person examined by the Court shall be sworn or affirmed, and a short note or memorandum of his evidence shall be taken down by the Court.

(h) The Court may, for good reason, from time to time, adjourn the settling of the proclamation: provided that no such adjournment shall be for more than a week, and that the total period of such adjournments shall not exceed four weeks.

(i) The costs of the searches, affidavits, and proceedings upon the settlement as aforesaid of the proclamation of sale shall be paid, in the

first instance, by the judgment-creditor or creditors: but he or they, as the case may be, shall be at liberty to recover them as part of the costs of execution, unless the Court, for reasons to be specified in writing, shall consider that the creditor or creditors should be deprived either wholly or in part of such costs, or should pay the costs of the judgment-debtor or judgment-debtors in the event of the latter appearing when the proclamation is settled.

(j) In case the applicant for sale has been admitted to sue as a pauper, the costs first mentioned in the next preceding rule shall, on the application of the pauper, be, in the first instance, paid by Government, but shall be recovered as part of the costs of execution and in the manner provided by section 411 of the Code of Civil Procedure.

(k) If, after the sale-proclamation has been published, any written communication regarding the property to be sold shall be received by the Court, which it considers material for purchasers to know, the Court shall cause the same to be read out when the property is put up for sale.

(l) Subject to the proviso in section 269 of the Code of Civil Procedure, sales of property in execution of decrees in the several Courts of each district (not being Courts of Small Causes) shall be held and commence at a certain day in each month, such day to be fixed by the District Judge or other principal Judge in the district, as regards his own Court and all other Courts sitting at the same place as his own. As regards subordinate Courts sitting at other places within his district, he shall fix the day in consultation with the Judges of those Courts: provided that where two or more of such Judges are stationed in the same place, the District Judge may fix the time for sales in consultation with only one of them.

(m) All property to be sold at each place of sale shall be entered in lists for each place—the lists of movable and of immovable property being distinct. The lists shall be so prepared as to contain, in regular order, each item of property to be sold in execution of the decrees of each Court severally; and such lists shall be stuck up in the Courts where the sales are to be held, not less than seven days before the date fixed for the commencement of the sales.

(n) At the stated hour upon each fixed date, the sales shall be commenced, and shall be carried on in the order in which the items of property are entered in the lists above mentioned. No sales shall be held after sunset; but the sales shall be held from day to day (except when the Court is closed) until the lists are finished; provided that this rule shall not interfere with the adjournment of any particular sale according to law.

(o) The same days shall not ordinarily be fixed for the sale of movable and of immovable property.

(p) Except as regards property of the kind mentioned in the next succeeding rule, sales in execution of decrees for all Courts sitting in sudder stations shall be held in or within the precincts of the Court of the District Judge or other Chief Judicial Officer. If in any other place there are two or more subordinate Courts, all the sales in that place shall be held in or within the precincts of such one of the Courts as may be selected

by the District Judge. Where there is only one Court, the sales shall be held in or within the precincts of that Court; provided that the Court executing a decree may, if it see fit, for reasons to be specified in writing, direct, in the interest of the parties, that the sale be held at any other time and place within its jurisdiction, and, when acting under this proviso, shall, unless there is good reason for the contrary, give the preference as regards choice of time and place to the wishes of the judgment-debtor.

(g) All sales of livestock, agricultural produce, articles of local manufacture and of other things commonly sold at country markets, shall, unless the Court otherwise direct, be held at such market in the neighbourhood of the place where the goods were attached, as may appear most likely to conduce to the advantage of the debtor, regard being had to the prospect of good prices and to the savings of expense in conveyance and carriage.

N. B.—These Rules do not apply to sales of under-tenures in pursuance of sections 59 and 60 of Act VIII (B.C.) of 1869.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Indemnity of Judges,

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

Mode of making proclamation.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.

Time of sale.

291. The Court may, in its discretion, adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped, if, before the lot is knocked down, the debt and costs (including the costs of sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Power to adjourn sale.
Stoppage of sale on tender of debt and costs, or on proof of payment.

292. No officer having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

Officers concerned in execution-sales not to bid for or buy property sold.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

Defaulting purchaser answerable for loss by re-sale.

294. No holder of a decree in execution of which property is sold, shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree

If decree-holder purchase, amount of decree may be taken as payment.

shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided that, when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

Provided also that when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

Provided also that, when immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for

money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

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305. When an order for the sale of immovable pro-

Postponement of sale of land to enable defendant to raise amount of decree.

perty has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised

by mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale, shall be paid into Court and not to the judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

*

320. The Local Government may, with the sanction of the Governor General in Council,

Power to prescribe rules for transferring to Collector execution of certain decrees.

declare, by notification in the official Gazette, that, in any local area, the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular

kind of, or interest in, immovable property, shall be transferred to the Collector; and rescind or modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

* * * *

322. When the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

Scheme for liquidation of money-decrees.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property ; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.

324. If, on the expiration of the letting or management under section 323, the amount Recovery of balance, if any, after letting or management. to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and if on the expiration of the said six

weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

* * * * *

H.—Of Resistance to Execution.

328. If in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be

numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

332. If any person other than the judgment-debtor is

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or of account on some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Transfer of property by judgment-debtor after institution of suit.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

Resisting or obstructing purchasers in obtaining possession of immoveable property.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession as the case may be, and pass such order thereon as it thinks fit.

Obstruction by claimant other than judgment-debtor.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final.

1.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered to be imprisoned by the Courts of such district.

Place of judgment-debtor's imprisonment.

Provided that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sun-

set or before sunrise, and no outer door of a dwelling-house shall be broken open :

But when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest :

Provided also that when the decree in execution of which
 Proviso. a judgment-debtor is arrested is a
 decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

- The Local Government may, by notification published in the official Gazette, direct that whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realized or commit him to jail in execution of the decree.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient
 Warrant for arrest to direct judgment-debtor to be brought up.

speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

338. The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Scales of subsistence-allowance.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

Judgment-debtor's subsistence-money.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit:

Subsistence-money to be costs in suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Release of judgment-debtor.

341. The judgment-debtor shall be discharged from jail,

- (a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or
- (b) on the decree being otherwise fully satisfied; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled:

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it think fit, summon and examine witnesses as to such inability and shall record the result.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such decree, may apply to the court which made the decree for an order directing his discharge from imprisonment, and the court may make such order if satisfied that he is unable to pay the debt, and that he is not guilty of fraud or other misconduct.

tion of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of applica- 345. The application, when made by
tion. the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody ;

(b) the amount, kind and particulars of his property, and the value of any such property not consisting of money ;

(c) the place or places in which such property is to be found ;

(d) his willingness to put it at the disposal of the Court ;

(e) the amount and particulars of all pecuniary claims against him ; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

346. The application shall be signed and verified by
Subscription and veri- the applicant in manner hereinbefore
fication of application. prescribed for signing and verifying
plaints.

347. The Court shall fix a day for hearing the appli-
cation, and shall cause a copy thereof,
Service of copy of with a notice in writing of the time
application and notice. and place at which it will be heard,
to be stuck up in Court and served at the applicant's
expense—

where the applicant is the judgment-debtor—on the

holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application :

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Power to serve other creditors.

349. Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 350, order him to be immediately committed to jail; or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver.

351. If the Court is satisfied—
(a) that the statements in the application are substantially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed

any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time ;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property ;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it think fit, make an order appointing a Receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

352. The creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him ; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts ; and shall frame a schedule of such persons and debts ; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

354. Every order under section 351 shall be published in the local official Gazette, and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

Effect of order appointing Receiver.

355. The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid ;

Receiver to give security and collect assets.

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Discharge of insolvent.

356. The Receiver shall proceed under the direction of the Court—

Duty of Receiver.

(a) to convert the property into money :

(b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government :

(c) to pay the said decreeholder's costs :

(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property :

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per

His right to remuneration.

centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the

Delivery of surplus. surplus, if any, to the insolvent or his legal representative :

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immovable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver ; but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immovable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable ; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, Declaration that insolvent is discharged from liability. the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall,

declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant. 359. Whenever, at the hearing under section 350, it is proved that the applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

Investment of other Courts with powers of District Courts. 360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts

Transfer of cases. by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma.

PART

Putni Sales.

REGULATION VIII OF 1819.

A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs, also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.

1. BY the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different maháls, were declared to be entitled to make any arrangements for the leasing of their lands in taluq or otherwise, that they might deem most conducive to their interests.

By the rules of Regulation XLIV, 1783,* however, all such arrangements were subjected to two limitations: first, that the jama or rent should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

The provisions of section 2, Regulation XLIV, 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V, 1812; and in Regulation XVIII of the same year it is more distinctly declared, that zamíndárs are at liberty to grant taluqs or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue, in the same manner as heretofore.

* Repealed by Act No. XXIX of 1871.

In practice the grant of taluqs and other leases at a rent fixed in perpetuity had been common with the zamíndars of Bengal for some time before the passing of the two Regulations last mentioned; but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation XLIV, 1793,* should, if called in question, be deemed invalid and void as heretofore.

This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to zamíndárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamíndáris; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

By the terms also of the engagements interchanged, it is amongst other stipulations provided, that in case of an arrear occurring, the tenure may be brought to sale by the

* Repealed by Act No. XXIX of 1871.

zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

These tenures have usually been denominated *patní taluqs*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *darpatní taluqdárs*: these again sometimes similarly underlet to *sepatnídárs*; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether in case the proceeds of sale should exceed the zamíndár's demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several *zilas* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the Legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *patní taluq* as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by *patnídárs* and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the zamíndár or other, for his ruin, as well as to secure the just rights of the zamíndár on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale and the form and manner of conducting such sale ;

and whereas the estates of zamíndárs under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zamíndár who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force ; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year.

It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters.

The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Mednúpur.

The term 'patní' imports an hereditary tenure. The use of the word carries with it all the incidents mentioned in the Regulation in the absence of any express stipulation to the contrary.—3 B. L. R., A. C., 437 ; 13 B. L. R., 409.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid

Leases fixing rent in perpetuity or for more than ten years, valid, though executed while section 2, Regulation XLIV, 1793, was in force.

tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and while the rule of section 2, Regulation XLIV, 1793,* which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question :

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, unless especially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

The words 'mukurari istemrari' contained in a potta must be taken in themselves to convey an hereditary right in perpetuity.—3 B. L. R., A. C., 226.

In 1798 a mukurari potta of a portion of a zemindari was granted to A at a consolidated jama of Rs. 6, for the term of four years, and at a uniform rent of Rs. 25 from the expiration of that period, to be paid year after year. The potta provided that mukuraridar should make improvements; that profits arising therefrom should belong to him, and not to the grantor; and that he should not dispose of any portion of the land granted without the permission of the grantor. No words of inheritance were used in the grant. The grantee died in 1875, when the heirs of the grantor sued to recover possession of the estate from the heirs and assignees of A. The defendants contended that the grant was transferable and hereditary, and that A, his heirs, and assignees were entitled to it in perpetuity.

Held, that the grant was for the life of A only, and not in perpetuity. The use of the word 'mukurari' alone in a lease raises no presumption that the tenure was intended to be hereditary, and, therefore, in order to decide whether a mukurari lease is hereditary, the Court must consider the other terms of the instrument under which it is granted, the circumstances under which it was made, and the intention of the parties.

Reg. VIII of 1819 was intended to apply to leases which might have been avoided by the grantor or his heirs during the time that Reg. XLIV of 1793 was in force; but which, so far from having been avoided, had been acted upon by the parties after the expiration of ten years, and were treated and considered as in existence at the time when Reg. VIII of 1819 was passed.—I. L. R., 5 Cal., 543; also 8 Cal., 663.

Garth, C. J., said:—"As the original grantee has lived until the year 1875, we have here no usage or course of succession to guide us, which

* Repealed by Act No. XXIX of 1871.

has served in some cases as a means of interpreting the intention of the parties, and has been held to supply the omission of words of inheritance. See *Dhunpur Singh v. Gooman Singh*, 11 Moore's I. A., 433, and the case of *Joha Singh*, 4 Sel. Rep., 271. We must therefore look mainly to the terms of the instrument itself and to the circumstances under which it was made."

The word 'mukurari' may import perpetuity, but not necessarily so. *Bengal Government v. Nawab Jafer Husain Khan*, 5 Moore's I. A., 467. See also 13 B. L. R., 124.

3. *First.*—The tenures known by the name of patnī taluqs, as prescribed in the preamble to this Regulation, shall be deemed Patnī-tenures declared valid, transferable and answerable for debt. to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared, that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

Second.—Patnī taluqdárs are hereby declared to possess the right of letting out the lands Patnīdárs' right of underletting. composing their taluqs in any manner they may deem most conducive to their interest, and any engagements so entered into by such taluqdárs with others shall be legal and binding between the parties to the same, their heirs and assignees:

Provided, however, that no such engagements shall operate to the prejudice of the right of the zemíndár to hold the superior tenure answerable for any arrears of his rent, in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant.

Third.—In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not Patnī-tenures not voidable for arrears. be liable to be cancelled for the same; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due; subject, however, to the provisions contained in section 11 of this Regulation.

4. If the holder of a patnī taluq shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to patnī taluqs, in so far as concerns the grantor of such under-tenure.

The same construction shall also hold in the case of patnī taluqs of the third or fourth degree.

5. The right of alienation having been declared to vest in the holder of a patnī taluq, it shall not be competent to the zamíndár or other superior to refuse to register and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee.

In conformity, however, with established usage, the zamíndár or other superior shall be but may demand fee entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jama or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account.

The zamíndár shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jama or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zamíndár or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee,

though of course liable to be called on to give security under the conditions of the tenure purchased.

A patnidar is not bound to recognize the purchase of darpatni, until the latter has registered the transfer in the *serishtah* of the former. Until such time he may sue the original darpatnidar for the rent.—13 B. L. R., 147.

6. It shall be competent to the zamíndár or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted :

Zamíndár may refuse sanction to transfer, till

provided, however, that if the security tendered by any fee and security tendered.

purchaser or transferee should not be approved by the zamíndár, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zamíndár to accept it, and give effect to the transfer without delay.

It is hereby provided, that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a patní taluq, nor to any alienation other than of the entire interest ; for no apportionment of the zamíndár's reserved rent can be allowed to stand good, unless made under his special sanction.

There is no appeal from an order made by the Civil Court under s. 6, Regulation VIII, 1819.—I. L. R., 1 Cal., 383.

7. In case of the sale of a patní tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zamíndár or other superior shall be entitled, of his own authority, to send a sazâwal to attach and hold possession of the tenure, until the forms prescribed be observed.

Upon public sale, if security not tendered within one month, zemindár may attach.

In case, also, of the sale of a patní tenure for arrears of the rent due upon it, under the rules of this Regula-

tion, if security be required by the zamíndár, and the purchaser fail to furnish the same within one month of the date of sale, the zamíndár shall similarly be entitled to send a sazáwal to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachments made under this section shall be regarded

Attachment to have as trusts for the benefit and at the effect of trust. risk of the purchasers: consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser: but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zamíndár or other superior making the attachment shall be received as *primâ facie* evidence to warrant process for an arrear so accruing.

8. *First.*—Zamindárs, that is proprietors under direct

Zamíndárs allowed engagements with the Government, sales of tenures, in shall be entitled to apply in which right to sell for manner following for periodical sales arrears is reserved. of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.*

Second.—On the first day of Baisákh, that is at the

First sale to be ap- commencement of the following year plied for on first of from that of which the rent is due, the Baisákh. zamíndár shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdárs or other holders of an interest

* See Reg. I of 1820, and Bengal Act No. VIII of 1865, s. 3.

of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the kachahrí, with a notice that if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the *sadr kachahrí* of the zamindár himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahrí or at the principal town or village upon the land of the defaulter.

The zamindár shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mufassal* shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahrí of the nearest munsif, or if there should be no munsif, to the nearest *tháná*, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.*

A respectable man, of good character, living and well-known in neighbourhood, may properly be considered a "substantial person:" it is too limited a construction to hold that the word "substantial" must be taken to mean a wealthy man, from whom damages could be recovered by the *patnidar* supposing the attestation to be false.—14 B. L. R., 394.

* See Act No. XXXIII of 1850.

It is not sufficient to serve a notice on the zamíndár himself or his agent instead of sticking it up on the Cutcherry. The object of the Regulation is to make known to the holders of under-tenures and ryots and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified.—I. L. R., 9 Calc., 172.

Although the provisions of s. 8, cl. 2, of Regulation VIII of 1819, specifying the manner in which proof should be given of service of the notice of sale, are merely directory, it is, nevertheless, absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the law.—I. L. R., 4 Calc., 41; 25 W. R., 141, dissented from.

Decided cases appear to show that the due service of the notice in the manner prescribed by the Regulation is essential to the validity of the sale; but that the provisions which are considered as non-essential are those relating merely to the mode of proving or verifying that service.—9 B. L. R., 91, note; 9 W. R., 242; 14 B. L. R., 394.

In the last case their Lordships in the Privy Council said:—"Their Lordships are disposed to agree with the judgment of the High Court as delivered by Sir Barnes Peacock, confined as it is to case where there is proof that the notice was duly served." Sir Barnes Peacock's words were: "The material part of cl. 2, s. 8, Regulation VIII of 1819, so far as this case is concerned, is, that the notice required to be sent into the mofussil shall be served. The zamíndár is exclusively answerable for the observance of the forms prescribed by that clause. The subsequent part of the section, which prescribes that the serving-peon shall bring back the receipt of the defaulter or of his manager, or, in the event of his inability to procure it, that he shall obtain that which by the Regulation is substituted for it, is merely directory; and if not done, does not vitiate the sale, *provided the notice is duly served*." See also a very late case (*Maharaja of Burdwan v. Tara Soonderree Debee* and others reported in the *Indian Jurist* for April 1883, p. 212). The fact of due publication must be properly established, and must not be a matter of controversy.—I. L. R., 9 Calc., 619.

Third.—On the first day of Kártik, in the middle of the year, the zamíndár shall be at

Mid-year sale to be applied for on first of Kartik.

liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Ásin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the zamíndár, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public kachahri; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

If the fifteen per cent. be not paid in cash, or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day,—that is, on the ninth from the first sale,—by proclaiming the same by beat of drum through the *bázár* of the *sadr* station of the *zila*, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

10. At the time of the sale, the notice previously stuck up in the kachahri shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

Forms to be observed
in selling.

A person shall attend on the part of the *zamíndár*, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mufassal*, nor shall any lot be put up to sale until the statement be produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt

for the notice shall have been read; the observance of which forms shall be recorded in a separate rúbakárí to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zamíndár shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

11. *First.*—It is hereby declared, that any taluq or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluq may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zamíndár to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zamíndár.

Second.—In like manner, on sale of a taluq for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should

Tenure to be sold free of incumbrance by act of defaulter.

No underlease to stand after sale.

have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the raiyats; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

Third.—Provided, nevertheless, that nothing herein contained shall be construed to entitle

Exception in favour of *bonâ fide* engagements with raiyats.

the purchaser of a taluq or other saleable tenure intermediate between the zamîndâr and actual cultivation to eject a khûdkâshî raiyat or resident and hereditary cultivator, nor to cancel *bonâ fide* engagements with such tenants by the late incumbent or his representative, except it be proved in a regular suit, sale, or brought by such purchaser, for the adjustment of, be not that a higher rate would have been demandable if the time such engagements were contracted by his predecessor.

The purchaser of a patni taluk sued for a kabooliat at sale, on the following rent. The former patnidar had brought a similar suit, at sale,—by had declared that the rent was not liable to enhancement. the bázâr the purchaser was bound by that decree.—6 B. L. R., 5, App.

Would the auction-purchaser of a Government estate shall be bound? See 3 C. L. R., 151.

The purchaser of a patni sued to enhance the rent of a ghatwâl land held by him in excess of 100 bigahs, on the ground that the first purchaser per cent. papers of 1811—1813 stated the ghatwâl's holding to be 100 bigahs only, by sum in the time of suit the ghatwâl held 3,000 bigahs, and it was short of the plaintiff that, unless the land were in possession of the plaintiff by the previous to the creation of the patni, the purchaser could recover by the s. 11. The Courts below found that the original estate of the ghatwâl consisted of 3,000 bigahs. As to the entry of 100 bigahs only in the *narisi* papers, their Lordships of the Privy Council remarked as follows:—“Weight must be given to ancient possession, and there may be as taken of causes to explain the entry of the smaller quantity. The returns previously have stated the amount under cultivation or producing profit on such they may have been that the police officer was careless, and did not care what he returned, or it may have been that the ghatwâl holder at time had some reasons for giving incorrect information; or possibly with may have been that the ancient ghatwâls originally held only 100 bigahs, but that the estate had increased to 3,000 bigahs many years before, the before the creation of the patni, which, notwithstanding Reg. VIII of 1819, would entitle the ghatwâl holder to hold, as against the patnidâr, at least, the whole quantity. But whatever the reason may have been, he their Lordships are of opinion that the long uninterrupted possession of all the ghatwâl holder ought clearly to have greater weight than the returns.”—8 B. L. R., 504.

In such a suit by a patnidâr against a ghatwâl, Government is entitled to be made a party. S. D. A., 1859, p. 537.

The grantor of a patni tenure, who subsequently purchases the lands granted by him in patni at a sale of the patni tenure, does not revert *ipso facto* to the position he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the rents realized by the patni-holder in the interim.—13 B. L. R., 198.

The plaintiff, purchaser of a taluk sold for arrears of rent under Reg. VIII of 1819, brought a suit for khas possession of a tank within the taluk purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the taluk. *Held*, that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpres rerum usus*; and it was open to the defendant to show by evidence as to the nature of the enjoyment what the origin of the tenure really was; and it being shewn that the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the taluk in which it was, it was held that the plaintiff was not entitled to a decree for khas possession.—13 B. L. R., 416.

The plaintiff, who sued the auction-purchaser for a confirmation of his title, held under a *kaimi jumma* tenure, and cultivated the land through persons called *burgaits*, with whom he shared the profits in some way. *Held* that, under s. 11 of the Regulations, the plaintiff's tenure was annulled.—4 C. L. R., 422.

Compare 4 C. L. R., 6, and 10 Moore's I. A., 123.

A sale does not, *ipso facto*, annul all tenures created by the defaulting amindar, but the purchaser, if he thinks proper, can avoid them.—3 B. L. R., 431, A. C. But see 4 C. L. R., 6. However it is now settled by a late Full Bench ruling, that under-tenures are merely voidable at the option of the purchaser. The sale does not *per se* render them void.—L. R., 9 Calc., 983.

12. The rules of the preceding section being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the amindar's reserved rent, will equally apply to the case of taluqs heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling.

Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between

Proviso. the purchaser of a taluq and the lessees of his predecessor.

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a taluqdár of his own interest, nor to a public sale in execu-

But not to apply to private transfers.

tion of a decree, nor to the case of a relinquishment by the taluqdár in favour of the zamíndár, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

13. *First.*—With reference to the injury that may be brought upon the holder of a taluq of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zamíndár, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such taluqdárs the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

Reason for allowing under-tenants means of staying sale.

Second.—Whenever the tenure of a taluqdár of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the zamíndár, the taluqdárs of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the zamíndár on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the zamíndár the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

How under-tenants may stay sale.

The direction in s. 13, Reg. VIII, 1819 is satisfied by payment not into Court, but to the zamindar. If a strictly literal construction were put upon the words 'into Court,' no payment effectual to stay the sale could be made, for 'the Court' has nothing to do with these sales, which are managed by the Collector.—I. L. R., 8 Calo., 954.

Third.—If the amount so lodged shall be rent due by the inferior taluqdār to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth.—If the person or persons making such a deposit in order to stay the sale of the superior tenure shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluq so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.*

* See Bengal Act No. VIII of 1865, s. 6.

An under-tenant, who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit.—4 B. L. R., 77, F. B.

14. *First.*—Should the balance claimed by a zamíndár on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

It shall, however, be competent to any party desirous of contesting the right of the zamíndár to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zamíndár for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamíndár or person at whose suit the sale may have been made.

Second.—In cases also in which a taluqdár may contest the zamíndár's demand of any arreer, as specified in the notice advertised, such taluqdár shall be competent to apply for a summary investigation at any time within the period of notice; the zamíndár shall then be called upon to furnish his kabúliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zamíndár or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the sum-

Sale not to be stayed unless arrear claimed be lodged.

But suit to lie for its reversal.

Defaulter may apply for summary investigation.

Sale not to be stayed unless amount claimed be deposited.

mary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in notes of the Bank of Bengal, by the taluqdár contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale. *

The defendants, after purchasing a patni taluk at an auction-sale for arrears of rent, granted a darpatni lease to the plaintiffs (the former darpatnidars) and received a bonus of Rs. 1,199. The auction-sale being five years afterwards set aside.—*held*, that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as darpatnidars under the former patnidar.—I. L. R., 4 Calc., 778.

It would not be “a sufficient plea” within the meaning of s. 14 that the receipt had been obtained or the notification published, *on*, instead of previous to the 15th Baisack.—I. L. R., 1 Calc., 175.

When, in a suit to set aside a patni sale under Reg. VIII of 1819, it was proved that the notice of sale was first stuck up in the cutcherry of the ijaradar (the mehal having been let out in ijara by the patnidar), and on the refusal of the ijaradar’s gomasta to give a receipt for service, it was taken down and subsequently personally served on the defaulting patnidar at his house, which was at some distance from the patni mehal, *held*, that the object of the law is to give notice of sale to the under-tenants as well as to the defaulter, and to advertize the sale on the spot for the information of intending purchasers; but though those provisions had not been strictly complied with, yet as the plaintiff (the patnidar) did not allege that, in consequence of the defective publication, there was not a sufficient gathering of intending purchasers, nor that the under-tenants were ignorant of the sale and were prejudiced by such ignorance, nor that the mehal was sold below its value, *held*, that the defect did not amount to a “sufficient plea” under s. 14 for setting aside the sale.—I. L. R., 1 Calc., 359.

This case was distinguished from a case reported in 9 B. L. R., 87. In that case the zemindar did not attempt to publish the notification of sale in the mofussil. There was moreover a grave irregularity in sticking up the notice in the Collector’s cutcherry, and it was held that these particular defects were sufficient to vitiate the sale.

See notes under s. 8, cl. 2, *supra*.

15. *First*.—So soon as the entire amount of the purchase-money shall have been paid in
 Delivery of possession to purchaser. by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kachahri

* See Reg. VII of 1832, s. 16, cl. 3.

dated to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the Police-officers and of all other public officers who may be at hand and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

If, by reason of the patnidar's not giving security, the zemindar withhold^o his *amal-dastak*, and also abstains from availing himself of the power which the law gives him of collecting the rents himself, it would be inequitable to allow him to recover from the patnidar the rent which the withholding of the *amal-dastak* has prevented his collecting.—I C. L. R., 464.

16.—[*Repealed by Bengal Act No. VIII of 1865, s. 2.*]

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Second.—One per cent. shall first be deducted from the nett proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluq to sale) to the zamíndár or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the follow-

ing year) shall be included in the demand to be thus satisfied.

Such antecedent balances, if the zamíndâr shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual taluqdâr, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth.—Any excess that may remain after satisfying the demand of the zamíndâr, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the taluqdárs of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluq sold, or on any part of it.

Where a mortgagee of a taluk paid the arrears due to prevent the sale of the taluk, and the bond provided that the amount advanced should be a charge on the surplus proceeds in the event of a sale, *held*, that he had a sufficient interest to protect, and that the payment was a valid charge on the property.—6 C. L. R. 28.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be

divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

The patnidar of a taluk granted a darpatni to the defendants on the 10th February 1869. The same patnidar afterwards mortgaged the patni taluk to the plaintiffs, who obtained a decree on their mortgage on the 28th September 1874. The patni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th of November 1876. On the 12th January 1877, the defendants instituted a suit against the patnidar, under cl. 5, s. 17, Reg. VIII of 1819, for compensation for the loss of the darpatni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds.

In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*held*, that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree.—I. L. R., 7 Cal., 173.

Sixth.—Provided, however, that no taluqdár of the second degree or other possessor of an assigned interest upon the land of the under-tenant be himself in arrear at time of sale, tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluq, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Seventh.—Should no claims upon the purchase-money of a taluq sold as above be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting

such certificate to the Collector, the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Eighth.—It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

REGULATION I OF 1820.

A Regulation for providing that all sales of certain taluqs made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.

1. WHEREAS it has been omitted to provide in the rules of Reg. VIII. 1819, whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause first, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described; and whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zamíndár's rent, the sale should be public, for the security of the interests of the owner of the tenure sold; which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner

as the periodical sales provided for by section 8 of the said Regulation :

the following additional rule has accordingly been passed by the Governor General in Council, to take effect from the date of its promulgation, within the several districts of Bengal, including Mednîpur.

2. *First.*—Whenever the proprietor of an estate paying

Rules of Reg. VIII, 1819, for periodical sales for zamindâr's arrears of rent, extended to other sales for rent.

revenue to Government shall desire to cause any tenure of the nature of those described in clause first, section , Regulation VIII, 1819, to be sold for arrears of rent due to him on

account thereof, and shall, under any summary process authorized by the general Regulations, have acquired the right of causing such sale to be made, the same shall be conducted, after application from the zamîndâr, by the Register or Acting Register of the Zila or City Court, or, in his absence, by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation VIII above quoted, for periodical sales.

Second.—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the kachahrî of the Court and at that of the Collector of the district.

Notice by proclamation.

Third.—The rules of sections 9, 11, 13, 15, and 17, Regulation VIII, 1819, are extended to all sales made after the manner herein provided.

Rules extended to sales hereunder.

ACT No. VIII (B.C.) OF 1865.

An Act to amend the Law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

WHEREAS doubts have arisen, in consequence of the repeal of section 16 of Regulation VII of 1832, as to the authority by whom patni taluks and other saleable under-tenures of

Preamble.

the nature defined in clause 1 of section 8 of Regulation VIII of 1819 are to be sold for arrears of rent due to the proprietor on account thereof; and whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears; It is enacted as follows:—

1. The word ‘Collector’ as used in this Act includes
 Meaning of the word ‘Collector.’ all officers exercising the full powers of a Collector of a district.

Words used in the singular number include the plural.

2. Section 16 of Regulation VIII of 1819 of the
 Law repealed. Bengal Code, Act VIII of 1835, and section 10 of Act VI of 1853, are repealed, except in so far as any other Regulation or law is repealed thereby.

3. The sale for the recovery of arrears of rent of
 Sale by whom to be conducted. patni taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act VI of 1853, the lands lie, and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid, which, by Regulations VIII of 1819 and I of 1820, the Judge is required to perform, shall be performed by the said Collector.

4. Whenever a decree for an arrear of rent, due in
 Notice of sale where to be hung up. respect of an under-tenure saleable under the provisions of section 105 of Act X of 1859, shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector, in whose Court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than twenty days from the hanging up of the

said notice in the Court in which the decree is in course of execution.

5. The said notice shall specify, in the words used in the plaintiff in the suit in which the decree was made, the name of the village, estate, and pergunnah, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

Notice of sale what to contain.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

How the sale may be stopped.

7. The under-tenure shall be sold to the highest bidder in open Court.

Sale to be to the highest bidder.

8. The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, twenty-five per cent of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office day.

Purchaser to deposit 25 per cent.

9. The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office day after the eighth day; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the

Deposit to be forfeited if balance of purchase-money be not paid up in time.

Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold. If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales shall also be applicable to all re-sales under this Act which may be rendered necessary by the default of any purchaser.

Provisions as to sales to apply to all re-sales.

11. When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or ameen to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.

Certificate and possession to be given to purchaser on payment by him in full.

12. From the proceeds of the sale of the under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

Proceeds of sale how to be dealt with.

13. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector, under this Act, if made within thirty days from the date of the sale; but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate

Appeal.

authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.

14. No appeal as of right shall lie from any order passed in appeal under this Act: but
 Power of revision. a Commissioner, in any case in which an appeal has been heard by a Collector, and the Board of Revenue, in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.
 Purchaser to recover purchase money in such manner as appellate or revising authority may direct, if sale be set aside.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

16. The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives, or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives, or assignees. Provided that nothing herein contained shall be held to entitle the purchaser to eject khodkast ryots or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with such class of ryots or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.
 Purchaser to acquire the under-tenure. with certain exceptions, free of incumbrances.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

The words of s. 16, Act VIII of 1865, do not enable the purchaser of a tenure, at his option, or discretion, to avoid under-tenures—all under-tenures created by the former holder of the tenure being *ipso facto* avoided by the sale under that section. 4 C. L. R., 6. But see notes under s. 11, Reg. VIII of 1819, *supra*.

Where an auction-purchaser, in virtue of s. 37 of Act XI of 1859 and Act VIII of 1865, B.C., brought a suit to avoid *shikmee howladaree* and *howladaree* tenures, the defendants admitted the nature of their holdings, but claimed exemption from eviction, on the ground that their ancestor, more than twelve years before, had cleared and cultivated the land and built a house thereon, and that since his death they themselves had continued to cultivate the land and reside upon it. The lower Courts found that the defendants were hereditary and resident cultivators.

Held, that the defendants were entitled to the benefit of the proviso in s. 16, the words of that proviso being wide enough to embrace every resident and hereditary cultivator *irrespective of his denomination*.—4 C. L. R., 165.

Where the defendant had purchased a tenure (in the report it is called a *jumma*), and the plaintiff, patnidar of eight annas of the mouza, sued him for arrears which had accrued due before his purchase, *held* that the defendant was not liable.—3 C. L. R., 116.

The purchaser of a Government estate is liable for all arrears due at the time of the purchase. Where a landlord has obtained a decree against his registered tenant, the tenure is always liable to be sold for the decree although it may be purchased by a third person.—*Shama Chand Koondoo v. Brojonath Pal*, 21 W. R., 94.

17. The purchaser of an under-tenure sold under this

Zamindár how to proceed if purchaser do not register.

Act shall apply to the zamindár or other landholder, within fifteen days from the day of sale, to have his name registered in the zamindár or other landholder's books as the purchaser; and shall execute a kabooliyat on the same terms and conditions on which the under-tenure was held by the defaulter; and, if such application be not made within fifteen days, it shall be lawful for the zamindár or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act X of 1859.

18. The provisions of section 3 shall be applicable to

Indemnity.

all sales held under Regulation VIII of 1819 previously to the passing of this Act; and no suit shall lie in respect of such sales on the plea of want of jurisdiction of the officer by whom they were conducted.

SCHEDULE.

Referred to in section 11.

I certify that *A B* has purchased, under Act VIII of 1865, the under-tenure (*as specified in the notice of sale*), and that his purchase took effect on the _____ day of _____ (*being the day after that fixed for the last day of payment*).

(Signed) C. D.,
Collector.

PART Registration.

ACT No. III OF 1877.

As amended by Act No. XII of 1879.

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be called “The Indian Registration Act, 1877:”

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude from its operation.

Local extent.

And it shall come into force on the first day of April 1877.

Commencement.

2. On and from that day Act No.

Repeal of enactments.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877 to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

‘ Lease ’ includes a counterpart, *kabuliyat*, an undertaking to cultivate or occupy, and an agreement to lease :
 ‘ Lease.’

Where a *daul darkhast* amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or to an agreement for lease, and does not, therefore, require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered.—I. L. R., 7 Calc., 703, 708, 717.

A Full Bench remarked: “ If the application of the defendants was accepted by the plaintiff by writing the word ‘ granted ’ in the margin, we think that the instrument in question was a lease, and therefore required registration. Even if it was an agreement for a lease, it also, in our opinion, required registration, because, coupled with possession by the defendants, its effect clearly was to give the latter an interest in the property for the term mentioned in the *daul* ; and it does not appear that any other document to complete the transaction was contemplated by the parties. This view seems to us perfectly consistent with the two decisions, which are mentioned in the reference (14 W. R., 178. and 17 W. R., 509). In those cases the application of the tenant was not accepted in writing. It was a mere proposal, which was accepted, *if at all*, orally, in which case the entire lease or agreement not being in writing, did not require registration.”

“ Lease.” A *daul fehrist*, being merely a memorandum by a zemindar’s agent of the rates of rent agreed upon, and to which the tenants affix their signatures in token of such agreement, is not a contract, and does not require to be stamped or registered.—I. L. R., 3 Calc., 322.

Undertaking to cultivate or occupy—means an *accepted* undertaking giving to the lessee a right or interest in the thing let.—I. L. R., 3 Bom., 21.

‘ Signature.’
 ‘ Signed.’

‘ Signature’ and ‘ signed’ include and apply to the affixing of a mark :

‘Immoveable property’ includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass.

‘Moveable property’ includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property.

‘Moveable property.’ The right to take juice from date-trees is not a right to immoveable property, but falls under the definition of moveable property. A registered lease to take juice from date-trees cannot have priority over an unregistered one of a prior date.—2 B. L. R., 394, A. C.

‘Book’ includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book.

‘Endorsement’ and ‘endorsed’ include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act.

‘Minor’ means a person who, according to the personal law to which he is subject, has not attained majority :

‘Representative’ includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot :

‘Addition’ means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father’s name, or where he is usually described as the son of his mother, then his mother’s name :

‘District Court’ includes the High Court in its ordinary original civil jurisdiction ; and

‘District.’ ‘Sub-District.’ ‘District’ and ‘Sub-District’ respectively mean a district and sub-district formed under this Act.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government,

Inspector-General of Registration.

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

Branch Inspector-General of Sindh.

Any Inspector-General or the Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

Districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several districts, formed as aforesaid, respectively.

Registrars and Sub-Registrars.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-

Offices of Registrar and Sub-Registrar.

district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector-General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector-General, and in the case of a district, what authority shall be Inspector-General with reference to such cantonment and the Sub-Registrar or Registrar thereof.

10. Whenever any Registrar other than the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the

local limits of whose jurisdiction the Registrar's office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district, including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

Absence of Registrar on duty in his district.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Sub-Registrar or vacancy in his office.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector-General. Such report shall be either special or general, as the Local Government directs.

Appointments under section 10, 11 or 12 to be reported to Government.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Suspension, removal and dismissal of officers.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

Remuneration and establishments of registering officers.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—“ The seal of the Registrar (*or* of the Sub-Registrar) of .”

Seals of registering officers.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Register-books.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the officer by whom such books are issued.

Forms.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

Fire-proof boxes.

PART III.

OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act, came or comes into force (that is to say),—

Documents of which registration is compulsory.

- (a) Instruments of gift of immoveable property :
- (b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account

of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Exception of

Nothing in clauses (b) and (c) of this section applies to

Composition deeds; (e) any composition-deeds;

(f) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

And of transfers of shares and debentures in Land Companies;

(g) any endorsement upon or transfer of any debentures issued by any such Company;

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;

(i) decrees and orders of Courts and awards;

(j) grants of immoveable property by Government;

(k) instrument of partition made by revenue-officers;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered.

Sale-certificates granted under the Civil Procedure Code are not compulsorily registrable.—I. L. R., 9 Calc., 82.

The High Court followed the practice prevailing in Bengal on the principle of *optimus legis interpretis consuetudo*. Madras and Bombay Rulings are to a contrary effect.

A deed purporting to secure the sum of Rs. 95 advanced on certain properties, giving the lender possession for a fixed period at a yearly rent of Rs. 8-12, Rs. 6-12 out of such rent being retainable by the lessee as interest on the sum advanced, does not require registration.—I. L. R., 4 Calc., 61.

Where the question is whether the market-value or the expressed value is to be taken to determine the necessity of registration, the Courts will not go beyond the value entered by the parties themselves in any particular instrument.—15 W. R., 558.

In another case (15 W. R., 331), the instrument sued on, though in form a *zarpeshgi* lease for six years, was held to be a mortgage to secure repayment of the sum of 99 rupees, and the Court decided that, as such mortgage, it created an interest of a value less than 100 rupees. In an Allahabad case it was decided that the interest ought to be added to the principal.—I. L. R., 1 All., 274.

The word 'declare' in s. 17 is to be taken on the same sense as the word 'create, assign, &c.,' used in the same section, *viz.*, as implying a definite change of legal relation to the property by an expression of will embodied in the document. A deed of partition is a declaration in the intended sense; but a letter containing an admission that a partition once took place does not 'declare' a right within the meaning of the section. It is not the expression or declaration of will by which the right is constituted. That an acknowledgment of a partition is distinct from the instrument of partition is to be gathered from clause (c). Had the terms of clause (b) been satisfied by a mere acknowledgment, clause (c) would have been superfluous.—I. L. R., 5 Bom., 232.

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property.

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property:

(e) Wills:

(f) all other documents not required by section 17 to be registered.

A bond for the payment of Rs. 83-8 on demand, together with interest thereon at the rate of two per cent. per mensem, which charges immove-

able property with such payment, does not, though the amount due on it may in time exceed Rs. 100, purport to create an interest of the value of Rs. 100 within the meaning of the Registration Act, and its registration is therefore optional.—I. L. R., 2 All., 96.

To the same effect is I. L. R., 2 All., 216. See also I. L. R., 1 Mad., 378.

19. If any document duly presented for registration be Documents in language not understood by registering officer. in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

20. The registering officer may in his discretion refuse Documents containing interlineations, blanks, erasures or alterations. to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

21. (a) No non-testamentary document relating to Description of parcels. immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(b) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c) No non-testamentary document containing a map or Documents containing maps or plans. plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate

in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. Failure to comply with the provisions contained in section 21, clause (b), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

By an agreement entered into between the parties, the vendor bound himself to execute within thirty days a deed of conveyance, and in default that the agreement should be considered as itself the deed of conveyance of certain lands mentioned in the agreement. The vendor having failed to execute such deed, the vendee, more than four months after the date of the agreement, presented it for registration. *Held*, that the conduct of the parties concerned could in no way affect the period of limitation within which such agreement could have been registered under the Act, and that the agreement could not be registered.—*L. L. R.*, 5 Cal., 820.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that,

Provision where delay in presentation is unavoidable.

on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Provision where office is closed on last day of period for presentation.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Every document other than a document referred to in section 28 and a copy of a decree or order, may be presented for registration either in the office of the Sub-

Place for registering other documents.

Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrar.

(b) The Registrar of a district including a Presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Registration by Registrar at Presidency-town and Lahore.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

Registration or acceptance for deposit at private residence.

But such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

Persons to present documents for registration.

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. For the purposes of section 32, the powers - of -

Powers - of - attorney attorney next hereinafter mentioned
recognizable for pur- shall alone be recognized (that is to
poses of section 22. say),—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India:—

Provided that the following persons shall not be required

Proviso as to persons ed to attend at any registration-office
infirm, or in jail, or ex- or Court for the purpose of executing
empt from appearing any such power-of-attorney as is men-
in Court. tioned in clauses (a) and (b) of this
section:—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

persons who are in jail under civil or criminal process ;
and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same with-

out requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :—

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall

forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to the registering officer* to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead;* Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

Refusal to admit execution of a document is a denial of execution within the meaning of the Registration Act. and so also is a wilful refusal or neglect to attend and admit execution; and when such refusal or neglect occurs. a suit will lie under s. 77 for the purpose of having the document registered. The Registrar is not a necessary party to such a suit.—I. L. R., 5 Calc., 445.

* See Act No. XII of 1879, s. 104.

Apparently an order of refusal may be reviewed by the authority making it.—I. L. R., 2 Calc., 131.

“The registering officer shall refuse to register the document as to the person so denying, appearing or dead.” These words incorporate a ruling in I. L. R., 1 All., 465. See also 15 B. L. R., 228.

A Registrar has no power to refuse to register a deed, on the ground that the full consideration therein mentioned has not been paid. His duty is, when the parties appear in person before him, simply to ascertain whether the deed has been executed by the persons by whom it purports to have been executed.—1 B. L. R., 47. O. C.

When a document has been presented for registration in due time by one of the executants, but the others have failed to appear within the time prescribed, the registering officer must “refuse to register.”—11 B. L. R., 20.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,
exempt from appearance at registration-office.

a person in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, and who would but for the provision next herein-

after contained be required to appear in person at the registration-office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead, and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly
 Deposit of Wills. authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. On receiving such cover, the Registrar, if satisfied
 Procedure on deposit of wills. that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover
 Withdrawal of sealed cover deposited under section 42. wishes to withdraw it, he may apply either personally or by duly authorized agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. If, on the death of a testator who has deposited
 Proceedings on death of depositor. a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his book No. 3.

Re-deposit. When such copy has been made, the Registrar shall re-deposit the original will.

46. Nothing hereinbefore contained shall affect the
 Saving of Act X of 1865, section 259. provisions of Indian Succession Act, section 249, or the power of any

Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the
Time from which registered document operates. time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered
Registered documents relating to property when to take effect against oral agreements. under this Act, and relating to any property, whether moveable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered. 49. No document required by section 17 to be registered,

shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of this Act.

A bond which hypothecates immoveable property as collateral security for payment of the money borrowed, although the money-obligation is of the value of Rs. 100, and the bond is not registered, can be received in evidence in support of a claim to enforce the money-obligation. I. L. R., 3 All., 229.

When a transaction is indivisible, and the registration of the document evidencing it is, by law, compulsory, the document will not be

admissible in evidence, if not duly registered ; but when the transaction is divisible, as when upon a loan of money, it is agreed—(i) that the loan shall be secured by a bond containing a covenant for repayment of the sum advanced with interest within a certain time ; and also (ii) that certain designated property shall be hypothecated as collateral security for the repayment of the loan,—the same rule does not apply, and an unregistered bond for the amount advanced, with interest, containing a further provision that as collateral security for the amount advanced certain property should remain hypothecated, may be used as *evidence of the loan*, although inadmissible to prove the hypothecation.—4 B. L. R., 18 followed. I. L. R., 5 Calc., 611. See also 4 B. L. R., 83 ; 2 C. L. R., 128 distinguished.

A, by an oral agreement, agreed to grant two mokurari leases of certain properties on certain terms to B, and thereupon executed two mokurari leases in favour of B, which were not however registered. Afterwards, A granted two mokurari leases of the same mouzas, upon terms more favourable to himself, to C and D, who, at the time of such grant, had notice of A's previous agreement with B. *Held*, in a suit for specific performance brought by B against A, and to which C and D were added as defendants, that, notwithstanding the provisions of ss. 49 and 50 of Act III of 1877, B could obtain a decree for specific relief, and a declaration that the leases to C and D, were void as against him. I. L. R., 6 Calc., 534, approving of I. L. R., 4 Bom., 126.

50. Every document of the kinds mentioned in clauses (a), (b), (c), and (d) of section

Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

17, and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and

not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (e), (f), (g), (h), (i), (j), (k) and (l) of the same section.

Explanation.—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under Act No. VIII of 1871 or this Act.

Where possession of immovable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession.—5 B. L. R., 86, App.

To the same effect is 3 B. L. R., 312, A. C.

A mortgaged a tank in 1859 to the plaintiff. The mortgage was never registered. A, in 1867, sold the tank to C, and executed a deed of sale thereof. The deed of sale was duly registered, and C had been ever since in possession under it. The plaintiff sued A on his mortgage, and in that suit C intervened, and was made a defendant. A did not appear in the suit. *Held*, that C having registered his deed of sale, and being in possession, his title was good against the plaintiff.—10 B. L. R., 380.

But the Allahabad High Court have held that s. 50 of Act III of 1877 has no retrospective effect.—I. L. R., 2 All., 198.

However it was subsequently held by a Full Bench of the same Court that, notwithstanding the provisions of s. 6 of Act I of 1868, a document registered under Act III of 1877, of which the registration is compulsory, takes effect, under s. 50 of the same Act, against an unregistered document relating to the same property and executed while Act VIII of 1871 was in force, and of which the registration under that Act was optional.—I. L. R., 2 All., 851. But see I. L. R., 5 Bom., 442; 6 Bom., 495.

Section 50 is intended to apply to the case of two innocent purchasers, giving the preference to the one who has taken the greater precaution to secure his title, but is not intended to apply to the case of a subsequent purchaser who registers, but who, at the date of his purchase, had *actual notice* of a prior unregistered purchase.

The words relating to possession found in s. 48 are merely intended as a declaration of the law limiting the operation of oral alienations, and of declaring the law with respect to them, by laying down that the only oral alienations of which the law can take notice in competition with registered instruments, are those which are properly established by evidence of possession.—I. L. R., 5 Cal., 336.

There are several rulings to the effect that, with respect to properties of less value than Rs. 100, a prior deed, coupled with or followed by possession, will, although unregistered, prevail against a subsequent deed duly registered. 12 W. R., 217; 12 W. R., 156; 14 W. R., 250; 20 W. R., 287. But to the contrary effect are 9 W. R., 547; 10 W. R., 36; 10 W. R., 196; 15 B. L. R., 295.

A man who has actual notice of a prior unregistered conveyance can not defraud the purchaser of his title. In *Benham v. Keane* (1 J. and H., 702) Vice-Chancellor Wood very clearly stated the principles of equity which apply: "The whole doctrine of notice proceeds on this——where a man has created a charge affecting his estate, he is not at liberty to enter into any new contract in derogation of the interest which he has created. This Court will not allow him to do the wrong himself, nor will it suffer any third person to help him to do it. No one will be permitted to enter knowingly into a contract with a person so situated, which would redound to his benefit at the expense of the prior incumbrance.—Any one who purchases *with the knowledge that his vendor is precluded from selling*, is subject to the same prohibition as the vendor himself."

Section 50 does not operate so as to exclude, on the ground of their non-registration, instruments executed before Act XVI of 1864 (the first of the Registration Acts) came into operation—I. L. R., 2 Mad., 147.

It was held by a Full Bench of the Allahabad High Court that, under the provisions of s. 53 of Act III of 1877, documents, registered under former Registration Acts do not take precedence over all unregistered documents, of which, at the time of their execution, registration was either optional or not required.—I. L. R., 4 All., 227.

Neither in England, nor in Ireland, has *mere* registration been held to amount to notice to subsequent mortgagees or purchasers. In Bombay,

the Courts have adopted the rule which prevails in America, and have held that registration does amount to notice to all subsequent purchasers of the same property. Possession has been deemed by Hindu and Mahomedan law, as interpreted in the Presidency of Bombay, to amount to notice of such title as the person in possession may have ; and any other person who takes a mortgage or other charge upon immoveable property without ascertaining the nature of the claim of him who is in possession, does so at his own risk. This is the rule in England also.

The Indian Registration Acts prior to 1864, like the Middlesex, Yorkshire, and Irish Registry Acts, gave priority of rank to priority of registration. The later Indian Registration Acts—*viz.*, Act XVI of 1864, XX of 1866, VIII of 1871, and III of 1877—proceed upon a different principle. Under them a registered instrument operates from the time at which it would have commenced to operate if no registration had been required or made, and not from the time of its registration, which rule applies both to compulsory and optionally registrable instruments.—I. L. R., 6 Bom., 168.

A person who holds under an unregistered deed of sale, the registration of which is not compulsory, and is in possession of the property conveyed by the deed, has a title superior to that of a person who claims under a registered conveyance of a later date unaccompanied by possession.—10 C. L. R., 129.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A.) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.	51. The following Books shall be kept in the several offices hereinafter named (that is to say)—
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In all registration-offices—

Book 1, “Register of non-testamentary documents relating to immoveable property ;”

Book 2, “Record of reasons for refusal to register ;”

Book 3, “Register of wills and authorities to adopt ;”
and

Book 4, “Miscellaneous Register.”

In the offices of Registrars—

Book 5, “Register of deposits of wills.”

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89* which relate to immoveable property, and are not wills.

* See Act No. XII of 1879, sec. 105.

In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be Endorsement on document presented. a document for registration, shall be Receipt for document. endorsed on every such document at the time of presenting it: a receipt for such document shall be given by Documents admitted to registration to be copied. the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year. Entries to be numbered consecutively.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates. Current indexes and entries therein.

55. Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III, and Index No. IV. Indexes to be made by registering officers.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Indexes Nos. I, II, III and IV shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

Extra particulars in Indexes.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Such copy to be filed by Registrar.

Every Registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain Books and Indexes, and to give certified copies of entries.

Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B.) As to the Procedure on admitting to Registration.

58. On every document admitted to registration, other

Particulars to be endorsed on documents admitted to registration.

than a copy of a decree or order, or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered, there shall

be endorsed from time to time the following particulars (that is to say,)—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his

Such endorsements to be dated and signed by registering officer.

signature, to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. After such of the provisions of sections 34, 35, 58

Certificate showing that document has been registered, and number and page of book in which it has been copied.

and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the

book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

A document bearing the certificate required by law showing that it has been registered must be treated as a registered document, notwithstanding the registration and procedure may have been defective. *Held*, therefore, where a document bore the requisite certificate, that, although it had been presented by an agent under a power of attorney not recognizable, it must be treated as a registered document—I. L. R., 4 All., 345.

Where a Registrar of Assurances has intentionally and deliberately issued a certificate of due registration of a document, with knowledge of certain facts relied on as affecting his powers to grant the certificate, the Courts are bound to accept such certificate as due proof of registration, and cannot go behind it for the purpose of satisfying themselves that the registering officer has strictly conformed with all the provisions of the Act.—I. L. R., 6 Calc., 25.

61. The endorsements and certificate referred to and

Endorsements and certificate to be copied. mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. When a document is presented for registration

Procedure on presenting document in language unknown to registering officer.

under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred

to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in section 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. Every registering officer may, at his discretion, administer an oath to any person examined by him under the provisions of this Act.

Power to administer oaths.

He may also, at his discretion, record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Record of substance of statements.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C.) *Special Duties of Registrar.*

64. Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure on registration of document relating to land situate in several sub-districts.

65. Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of

Procedure where document relates to land situate in several districts.

such property is situate other than the district in which his own sub-district is situate.

The Registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D.) Special Duties of Registrar.

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registered under section 30, clause (b), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(E.) Of the Controlling Powers of Registrars and Inspectors General.

68. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69. The Inspector - General shall exercise a general
 Inspector-General to superintend registra-
 tion-offices. tion-offices in the territories under the
 Local Government, and shall have
 His power to make rules. power from time to time to make rules
 consistent with this Act—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each district;

declaring what territorial division shall be recognized under section 21;

regulating the amount of fines imposed under sections 24 and 34, respectively;

regulating the exercise of the discretion reposed in the registering officer by section 63;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;

declaring the holidays that shall be observed in the registration-offices;

and generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette and shall then have the same force as if they were inserted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24, or section 34, and the amount of the proper registration-fee.

His power to remit fine.

PART XII.

OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded.

71. Every Sub-Registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order:

Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.

and if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

Application where Sub-Registrar refuses to register on ground of denial of execution.

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate, in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

Procedure of Registrar on such application.

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

Order to register and procedure thereon.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Where execution of a document was denied, and it was alleged to be a forgery, the District Registrar ordered registration. In a suit brought to have the document declared void and to have it cancelled, the Court placed the *onus* of proving its genuineness and its execution by the plaintiff on the defendant.—*Held*, that the proceedings of the Registrar, when he inquired whether the document had been duly executed or not, were in no sense those of a “competent Court,” but only those of an executive officer invested with *quasi-judicial* functions, and that, consequently, such a suit was maintainable; and that, under the circumstances, the *onus* of proof was properly placed on the defendant.—I. L. R., 7 Cal., 736, following 8 B. L. R., App., 26. *Ram Chunder Pal v. Becharam De* (10 W. R., 329) dissented from.

Refusal by Registrar. 76. Every Registrar refusing—

(a) to register a document except on the ground that property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the Registrar refuses to order the document

Suit in case of re-
fusal. to be registered, under section 72 or section 76, any person claiming under such document, or his representative,

assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for

registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

“Any person claiming under such document.” These words are significant. The words in s. 32 are “some person *executing or* claiming under the document.” A suit can only be instituted by a person claiming under a document. This was ruled by an Allahabad Full Bench under s. 73 of Act VIII of 1871. In this case the vendor had presented a document for registration. The purchaser was not present, and the vendor stated that he had not received the purchase-money. The Registrar believed the deed was of the vendor’s own creation, and refused to register.—I. L. R., 1 All., 318.

A Sub-Registrar refused to register a bond as the obligor denied the execution of it. The obligee, instead of applying to the Registrar under s. 73 of the Registration Act, in order to establish his right to have such bond registered, sued the obligor claiming a decree directing the registration of such bond. *Held*, that such suit was not maintainable.—I. L. R., 3 All., 397.

This ruling is followed in I. L. R., 9 Cal., 150. I. L. R., 2 All., 46, dissented from.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. Subject to the approval of the Governor General
 Fees to be fixed by in Council, the Local Government
 Local Government. shall prepare a table of fees payable—
 for the registration of documents :
 for searching the registers :
 for making or granting copies of reasons, entries or
 documents, before, on or after registration :
 And of extra or additional fees payable—
 for every registration under section thirty :
 for the issue of commissions :
 for filing translations :
 for attending at private residences :
 for the safe custody and return of documents :
 and for such other matters as appear to the Local
 Government necessary to effect the purposes of this Act.

Alteration of fees. The Local Government may, from time to time, subject the like approval, alter such table.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

Fees payable on presentation.

PART XIV.

OF PENALTIES.

81. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

Penalty for certain other offences.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;

Making false statements before registering officer.

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

Delivering false copy or translation.

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act;

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class:*

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency - towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns for the time being in force.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code the words

* See Act XII of 1879 s. 106.

“judicial proceeding” shall include any proceeding under this Act.

A Registrar shall, but a Sub-Registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

PART XV.

MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed
Destruction of un-claimed documents. in any registration-office, for a period exceeding two years, may be destroyed.

86. No registering officer shall be liable to any suit,
Registering officer not liable for thing *bonâ fide* done or refused in his official capacity. claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this
Nothing so done invalidated by defect in appointment or procedure. Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it
Registration of documents executed by Government officers or certain public functionaries. shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information

respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a certificate under the Land Improvement Act, 1871, shall send a copy of such certificate to the registering officer, within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy* in his book No. 1.

Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his book No. 1.*

Exemptions from Act.

90. Nothing contained in this Act or in Act No. VIII of 1871 or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

(a) Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(b) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c) Documents which, under any law for the time being in force, or filed periodically in any revenue-office, by patwaris or other officers charged with the preparation of village-records.

(d) Sanands, inám title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

* See Act XII of 1879, s. 107.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), and (c), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Inspection and copies of such documents.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of Law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

Burmese registration rules confirmed.

PART XXI.

Revenue Sales.

ACT No. XI OF 1859.

(As amended by Act III (B.C.) of 1862.)

*An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.**

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Govern-

Preamble.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874. The words 'proprietor,' 'revenue,' 'estate,' 'tenure,' 'jurisdiction' (of a Collector), 'Collector' and 'demand,' occurring in Act No. XI of 1859, are defined in Bengal Act No. VII of 1868.

ment, in the Province of Katak : and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured : and whereas it is expedient to afford sharers in estates, who duly pay their shares of the sadr jama of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers : and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents : and whereas it is expedient to provide for the voluntary registration of dependent taluqs existing at the time of settlement : and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale : and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue : and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Behar and Orissa ; It is enacted as follows :—

1. [*Repealed by Act No. XIV of 1870.*]

2. If the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbandí of any mahál have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate or Joint Magistrate, as the case may be, and Munsifs, and at every thana-station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. Provided that, in the district of Silhat, the Collector may be authorized by the Board of Revenue to proceed in the first instance by the distress and sale of the personal property of defaulters, instead of by the sale of their estates.

In Silhat, personal property of defaulters may in first instance be distrained and sold.

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and Police-thana of the Division in which the estate or share of an estate to which the notification relates is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or Police-thana, in some one or more of such Courts or thanas; and also at the kacharí of the málguzár or owner of the estate, or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

Proviso as to certain descriptions of arrears.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of takkáví, pulbandí or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

Act XI of 1859 is to a great extent a remedial Act passed for the benefit of the subject, and in order to relax the stringency of former statutes, whereby the Crown was empowered to sell estates for non-payment of revenue. Section 5 of the said Act applies to estates which are under attachment under the Civil Procedure Code, and which are in the hands of a manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts. Such attachments are not superseded by the appointment of such manager.

The words "arrears of estates under attachment" apply to cases when a portion only of an estate is under attachment, as well as to cases in which the whole estate has been attached.—12 B. L. R., 297.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estate or shares of an estate which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid.

And if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette.

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder.

And no payment or tender of payment, made after sunset of the said latest day of payment shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Tender after latest day of payment not to stop sale.

See Act VII of 1868, s. 3.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, in his own office, and as soon thereafter as may be in the Munsifs' Courts and Police-thánás within which the estate or share of an estate, or any part of it, is situated, and also at the kacharí of the málguzár or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the raiyats and under-tenants to pay the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Notice to raiyats, &c.

8. No claim to abatement or remission of revenue unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

Claims of defaulter against Government not to invalidate sale.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a

Deposits receivable from persons not proprietors.

deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

And in case the person depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

Where the Government revenue of portion of a taluk has, on default by the landlord, been paid by the tenant holding the remaining portion of the taluk under a baibilwafa and zurpesbgi, the tenant is entitled, not only under this section, but also under s. 69 of Act IX of 1872, to recover the amount so paid by him, the landlord's liability in such a case being not merely personal, but a liability imposed upon his estate.—I. L. R., 4 Calc., 369 ; and 8 C. L. R., 209.

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his

Separation of shares held in common, by opening separate account.

share of the Government revenue separately, he may submit to the Collector a written application to that effect.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and in the Police-thánás in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

As to fees chargeable on applications under this section, see Act III of 1862 (B. C.), s. 3.

11. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sadr jama heretofore paid on account of it.

On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

See Act VII of 1876 (B. C.), s. 69.

As to fees chargeable on applications under this section, see Act III of 1862 (B. C.), s. 3.

The plaintiff and *A* and *B* were joint owners of an estate paying revenue to Government. The names of *A* and *B* were alone recorded in the rent-roll of the Collector. *A* and *B* alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under this section, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation, on the ground that the lands had never been divided, but always held *ijinali*, and that *A* and *B* claimed a larger share than they owned; but his objection was rejected by the Collector, on the ground that he was not a recorded proprietor, and the application of *A* and *B* was granted. The plaintiff then sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside. *Held*, that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party. 6 B. L. R., 614.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy

If objection be made, parties to be referred to Civil Court.

or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate

is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadr jama* stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for

Sale of separate shares.

one or more shares, if the estate shall become liable to sale for arrears of

revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to

constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of jama assigned thereto.

The proprietors of a joint mehal, the *jama* of which had been partitioned under s. 10, Act XI of 1859, were in possession of specific shares under a private arrangement among themselves, but had not obtained separation of shares under s. 11. One of the proprietors sold his share to the plaintiff and the shares of two other proprietors who made default in payment of the revenue were sold under s. 13, and purchased by the defendants. In a suit for exclusive possession of the share purchased by the plaintiff, *held*, that the defendants acquired by their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled as against them to have exclusive possession of any specific share.—14 B. L. R., 170.

A, in exchange for his lakhiraj land, obtained in 1791 from his zemindar 441 bighas of māl land, which the zemindar thereupon created rent-free. The zemindar fell into arrears, and the zemindari was sold. Subsequently three persons, who had become owners of the zemindari, applied to the Collector, under s. 11, Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bigahs, was sold under s. 13, and purchased by the plaintiff, who now sued the descendants of A to recover possession. *Held*, that the sale of a share of a zemindari under s. 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zemindar, but he acquires the share, as laid down in s. 54, subject to all incumbrances.—3 B. L. R., 446, A. C. •

14. If in any case of a sale held according to the provisions of the last preceding section,

Entire estate may be sold under certain conditions.

the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15. If any recorded proprietor or co - partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jama of the entire estate, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All monies and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

As to fees chargeable on applications under this section, see Act III of 1862 (B. C.), s. 3.

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

As to fees chargeable on applications under this section, see Act III of 1862 (B. C.), s. 3.

17. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; Estates under Court of Wards or under attachment.

and no estate the sole property of a minor or minors and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI, 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until the minor or minors, or one of them, shall have attained the full age of eighteen years.

And no estate held under attachment by the Revenue-authorities, otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue-officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption.

Provided, however, and it is hereby enacted, that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

The right of bringing an estate to sale under s. 6 of Act XI of 1859 is exclusively a right of the Government, and the law gives no

other party any right to demand that such a sale shall be held. The terms of s. 18 unmistakably vest the Collector with an absolute discretion to exempt an advertised estate from sale. This discretion is not restricted by the condition that the arrears of revenue, for which the sale has been advertised, shall have been paid; much less that they shall have been paid by any particular person or party. The only condition imposed on the Collector is that he "shall duly record in a proceeding the reason for granting such exemption." These are the legal powers of the Collector under s. 18. Next, as to the considerations which should influence a Collector in the exercise of this wide discretion: The law of summary sale for recovery of arrears of revenue is a necessary evil, but an evil nevertheless. One of the cardinal objections to it is, that, in order to secure the public revenue, it unavoidably places in the hands of an unscrupulous proprietor the power of letting his estate go to sale for the express purpose of avoiding the tenures and liens with which he or his predecessors have encumbered it, and thus of realizing under such a sale (carrying with it the peculiarly favourable conditions of a revenue-sale) a price higher than he would be likely to obtain in the open market; in other words, of appropriating to himself a second time the market-value of all interests which he has already by his own acts transferred to others, in addition to the value of the interest which he has reserved to himself, which only could be transferred by private sale, or would pass in a forced sale held by the Civil Court on account of the proprietor. It is the plain duty of the Revenue Officers of Government to defeat any such schemes by every means which the law places at their disposal, rather than to encourage and assist them. It is incumbent on those who are entrusted with the working of so powerful an engine as the Bengal Revenue Sale Law to exercise to the fullest extent the ample discretion which the Legislature has left in their hands in order to counteract its possible evil effects.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land-revenue office at the *sadr* station of the district: Provided, however, that Sales where to be made. it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable from sickness, from Adournment of sales. the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by

written proclamation stuck up in his kachari ; and so on, from day to day, until he shall be able to commence upon or to complete the sale ; but, with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

21. On the day of sale fixed according to section 6 of this Act, sales shall proceed in regular order ; the estate to be sold bearing the lowest number on the tauji or register in use in the Collector's office of the district being put up first, and so on, in regular sequence ; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal notes or post-bills, or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid ; and in default of such deposit the estate or share shall forthwith be put up again and sold.

23. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty ; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth ; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid

by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale.

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. [*Repealed by Bengal Act No. VII of 1868, s. 29.*]

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale; and the Local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and

Annulment of sale
in special cases.

27. All sales of which the purchase - money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

And sales against which an appeal may have been preferred, shall be final and conclusive from the date of such dismissal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

See Act VII of 1868 (B. C.), s. 4.

28. Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and Police-thanas within whose jurisdictions any part of the estate or share sold shall be situated.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the mal-kachari or in some conspicuous place of the estate or share of an estate purchased.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which fall due after the latest day of payment aforesaid.

In the absence of any express stipulation to the contrary in the proclamation of a sale of land subject to Government revenue and cesses

in execution of a decree. the purchaser must be taken to purchase subject to the payment of all revenue and cesses either due or accruing due at the time of the purchase. such revenue and cesses constituting a standing incumbrance and first charge upon the land from which they are payable.—7 C. L. R., 456.

Government revenue does not become due from day to day, but at certain specified times. according to the contract of the parties, or the custom of the district in which the lands liable to pay such revenue are situate. It is not, therefore, liable to apportionment ; and the person who is the owner of the revenue-paying estate at a time when the payment of the revenue falls due, is the only person liable for its payment. The purchaser of an estate, which pays Government revenue, takes it subject to all revenue and cesses, whether in arrear or accruing.

Held, therefore, in a suit by a purchaser for a certain sum for Government revenue and cesses. which became due after the date of. though due for a period previous to, his purchase, which sum he alleged he had been compelled to pay to save his interest in the subject of his purchase, that he was not entitled to recover.—I. L. R., 6 Calc., 389.

The defendant became a purchaser at an execution-sale of a share of certain property, of which the plaintiff held another share partly as zemindar and partly as patnidar ; the sale took place in September 1872, but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the confirmation, a considerable sum became due for Government revenue on the whole property. and, to prevent its being sold, the plaintiff paid the whole of the revenue due. In a suit to recover the proportion due in respect of the share purchased by the defendant, *held*, that, on confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale ; and, therefore, she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation.—I. L. R., 2 Calc., 141.

31. The Collector shall apply the purchase - money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold ; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district ; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following : to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction

of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

32. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of section 25 or section 26 of this Act.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under section 25 of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money.

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against

the person by whose act or omission he considers himself to have been wronged.

See 5 B. L. R., 135.

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

And no order for restoring such decreeholder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

37. The purchaser of an entire estate in the permanently settled districts of Bengal, Bihar and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions,

First.—Istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement,

Secondly.—Tenures existing at the time of settlement, which have not been held at a fixed rent.

Provided always that the rents of such tenure shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Taluqdárá and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly.—Leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk.

A person holding land, which is not protected from the operation of s. 37 of Act XI of 1859 by any of the first three exceptions is entitled to the benefit of the fourth exception in respect of any of the items mentioned therein, which may have been established on the land; and there is nothing in the words of the exception confining the benefit of it to tenure or under-tenure holders, and excluding the ryots from it. The benefit of the fourth exception must be limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue-sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or some previous occupier.—I. L. R., 8 Calc., 110, following I. L. R., 3 Calc., 293.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Provided always that nothing in this section contained
 shall be construed to entitle any such
 Proviso. purchaser as aforesaid to eject any
 raiyat having a right of occupancy at a fixed rent or at a
 rent assessable according to fixed rules under the laws in
 force, or to enhance the rent of any such raiyat otherwise
 than in the manner prescribed by such laws, or otherwise

than the former proprietor, irrespectively of all engagements, may have been entitled to do.

A purchaser at an auction-sale cannot, where lands are held under an hereditary ghatwali tenure originally created before the decennial settlement and at a fixed rent, resume those lands on the suggestion that the ghatwali services are no longer required.

The omission of words of inheritance does not show conclusively that a sanad is not hereditary; it being shewn that a ghatwali tenure had descended from father to son, it was held that it was an hereditary tenure.—11 B. L. R., 71.

Their Lordships of the Privy Council held that the right to resume does not accrue to the zemindar on the mere suggestion that the services have ceased, or that they are no longer necessary. They followed the principle laid down in *Forbes v. Mir Mahomed Taki* (5 B. L. R., 529). In the case of *Leelanund Singh v. Nussieb Singh* (6 W. R., 80), Kemp and Jackson, JJ., considered that the land being held in lieu of wages and on a *quasi*-contract for service, the zemindar was at liberty to determine the tenure when the services were no longer required. In that case, however, the ghatwals were said to hold the land, not under a sanad conferring an hereditary and indefeasible right, but “on the payment of a quit-rent, with enjoyment of the profits of the land in lieu of wages: but such possession, however long, would not entitle them to hold the lands at a fixed jama, or to retain a portion of the land after they have ceased to perform the duties for which the land was assigned to them.” Their Lordships, after quoting these words, said, that the tenure appeared to be of a different sort; but if it were of the same nature, it appeared that the Judges deciding the case had changed their opinion.

On the 13th January 1871, *A* and *B* purchased an estate sold for arrears of Government revenue. The original proprietors asserted their right to collect the rents of a portion of the property by virtue of holding two shikmi taluks and a howla tenure. This right was affirmed by the High Court in April 1875. *B* had previously sold his interest to *C*. On the 29th May 1876, *A* created a patni of his 8 annas in favour of *D* and *E*, and on the 4th July 1876, *C* purchased all the rights of the original proprietors. On the 18th January 1877, *A* sued under Act XI of 1859, s. 57, to cancel or vary the tenures, making the original proprietors, *C*, and various tenants defendants. *C* objected that *A* had no right of suit or cause of action, as he had parted with all his rights to *D* and *E*; and that as his entire interest in the estate was only eight annas, he could not sue to cancel a part only of the sub-tenures. *D* and *E* then applied to be added as parties, and were made plaintiffs. *Held*, that *A* had no cause of action, as he had previously parted with all his rights as zemindar, to cancel these tenures in favour of *D* and *E*, nor could *D* and *E* sue, as they were not “purchasers of an entire estate.” That *A* having no cause of action it was not competent to the lower Court to add *D* and *E* as plaintiffs, and so introduce a right of action which did not previously exist; and that, even on the assumption that *D* and *E* were properly made plaintiffs, the lower Appellate Court should have taken into consideration certain admissions made by them as to the existence of the under-tenure, both before and after the Government sale.—15 W. R., 481, followed; I. L. R., 6 Calc., 827.

In a suit to avoid an under-tenure by the purchasers at an auction-sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the Permanent Settlement, and that some portion of the lands comprised in it were covered with permanent struc-

tures and improvements, and that, accordingly, it was protected under exceptions 1 and 4 to s. 37 of Act XI of 1859 ; but the lower Court gave a decree to the plaintiffs and annulled the under-tenure. *Held.* by White, J., that, notwithstanding a party may fail to show that his tenure was created prior to the Permanent Settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding.—I. L. R., 3 Calc. 293.

Where, at an auction-sale for arrears of revenue, the Government becomes the purchaser of the property, and afterwards makes settlements with the former proprietors of the under-tenures, the question whether or not the Government cancelled the under-tenures existing at the time of the sale is one to be decided solely according to the effect of the proceedings taken by the Collector in each case. It is a mistake to suppose that their Lordships of the Privy Council, in the case of *Khajah Ahsanulla* (13 Moore's L. A., 317), intended to lay down a general rule according to which all questions of this nature are necessarily to be decided.—2 C. L. R., 13.

Where, prior to the Permanent Settlement, grants of land had been made on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the performance of the ghatwali services on the part of the zemindar,—*held.* in a suit by the zemindar to resume the lands, that, as long as the ghatwals were willing and able to perform the services, the zemindar had no right to put an end to the tenure on the ground that the services were no longer required.

A purchaser at a sale for arrears of Government revenue is not entitled to cancel a ghatwali tenure created subsequently to the Permanent Settlement. *Quære*,—Whether he would be entitled to enhance the rent?—13 B. L. R., 124.

Ghatwals may be dismissed for disobedience or incompetence, or because they do not properly perform the services to which their tenures are subject ; but their tenures cannot be put an end to merely on the ground that their services are no longer required.

A sale for arrears of revenue cannot of itself merely, and without any act, proceeding or demonstration of will on the part of the purchaser, alter the character of an under-tenure. Where, by an old potta, lands forming part of a zemindari had been leased at a specified rent, but there were no words in the potta importing the hereditary and istemrari character of the tenure.—*held.* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed.—2 B. L. R., 23, P. C.

The words "*mokurrari istemrari*," contained in a potta, must be taken in themselves to convey an hereditary right in perpetuity.—3 B. L. R., 226, A. C. An auction-purchaser is not barred by adverse possession which has barred the former defaulting proprietor, nor by decrees in suits for possession brought by the former proprietor, in respect of the same lands, and against the same parties. The cause of action for possession of lands, which the auction-purchaser alleges to have formed a part of his permanently-settled zemindari, and for which he still pays Government revenue, arises at the date of purchase.—3 C. L. R., 151.

38. The following rules for the registration of taluqdárá and other similar tenures created since Registration of cer- and other similar tenures created since
tain tenures and farms. the time of settlement, and held imme-

diately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

Common and special registry. 39. There shall be two sets of registers, one for common registry and one for special registry.

Common registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government.

Special registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

The fact that a tenure is registered in the common registry is not of itself *prima facie* evidence that such a tenure exists.—I. L. R., 9 Cal., 116.

40. The holder of any taluqdárá or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs.

The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable :—

(1), the pargana or parganas in which the tenure is situated ;

(2), the nature of the tenure ;

(3), the name or names of the village or villages whereof the land is composed, or wherein it is situated ;

(4), the area of the land comprised in the tenure, with its boundaries in complete detail ;

(5), the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it ;

(6), the date of the deed constituting the tenure, or the date when the tenure was created ;

(7), the name of the proprietor who created the tenure ;

(8), the name of the original holder of the tenure ;

(9), the name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same.

The application shall contain such of the foregoing particulars as are applicable to farms.

See Act III of 1862, ss. 2 and 3.

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *málkacharí* of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made, the Collector shall register the tenure or farm.

If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue

of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

See Act VIII of 1876 (B. C.), s. 96.

43. Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of taluqdárá and other similar tenures.

See Act III, 1862 (B. C.), ss. 2 and 3.

44. Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders; and when so registered shall be entered only in the special register.

Registration of old tenures.

Application for such registry shall contain the particulars specified in section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid,

he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected.

If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bonâ fide* tenures of the description herein referred to.

See Act III of 1862, B. C., ss. 2 and 3.

45. [*Repealed by Bengal Act No. III of 1862.*]

46. The actual expenses of any measurement, survey or local enquiry under sections 42 and 44 of this Act shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

47. No Civil Court shall be competent to order the Revenue - authorities to enter any tenure or farm in the special register.

Provided always that the refusal of the Revenue-authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue-authorities shall proceed in accordance with

the general instructions which they may receive from the superior Revenue-authorities to whom they are subordinate, and from the Local Government; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless, in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud to the injury of the Government revenue.

Provided that a tenure or farm in the hands of a *bond fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount rent as would have been fair and equitable at the time the special registry thereof, such amount to be fixed by the Collector.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue-authorities upon such application be in favour of the claimant.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement,

Rights of purchaser
estate not per-
manently settled. sold
its own arrears.

and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauzá, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

53. Excepting sharers in estates under batwára who Rights of purchaser may have saved their shares from sale being sharer in estate; under sections 33 and 34, Regulation XIX, 1814, and sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself; shall by such purchase acquire the

estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

See 7 B. L. R., 52, App.

A, in November 1862, purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector, and purchased by A on the 29th March 1863. *Held*, that A, at the time of his second purchase, was an unrecorded co-partner of an estate within the meaning of s 53 of Act XI of 1859, and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of revenue—I. L. R., 4 Cal., 607.

A co-proprietor, who purchases an estate at a sale for arrears of Government revenue, takes it subject to the incumbrances created by the defaulting proprietor—7 B. L. R., 52, App.

54. When a share or shares of an estate may be sold
Rights of purchasers under the provisions of section 13 or
of shares of estate. section 14, the purchaser shall acquire
the share or shares subject to all incumbrances, and shall
not acquire any rights which were not possessed by the
previous owner or owners.

55. Arrears of rent which on the latest day of payment
Recovery of arrears may be due to the defaulter from his
due to defaulters. under-tenants or raiyats, shall, in the
event of a sale, be recoverable by him after the said latest
day, by any process except distraint which might have been
used by him for that purpose on or before the said latest day.

56. Any Collector or other officer aforesaid conducting
Punishment for con- a sale under this Act shall be com-
tempt. petent to punish any contempt com-
mitted in his presence in open kachari or office for the
time being, by fine to an extent not exceeding two hundred
rupees, commutable if not paid to imprisonment in the civil
jail for a period not exceeding one month; and the Magis-
trate to whom such an offender may be sent by a Collector or
other officer as aforesaid, shall carry his sentence into effect.

Provided that an appeal from any order passed under
this section shall lie to the Revenue Commissioner, whose
decision shall be final.

57. A default to make good a bid by making the deposit
Default as to deposit required by section 22 of this Act,
a contempt. shall be held to be a contempt.

58. When an estate is put up for sale under this Act Government may purchase at sale. for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

59. [*Repealed by Bengal Act No. III of 1862.*]

60. The provisions of Regulation VII of 1822 and Regulations VII, 1822, and IX, 1825, in force in certain estates. Regulation IX of 1825 shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

61. In the construction of this Act the word 'Collector' shall include a Deputy Collector or other officer exercising, by the authority of Government, the powers of a Collector or Deputy Collector.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal, as are or shall be subject to the general Regulations of that Presidency.

SCHEDULE A.

I certify that *A B* has purchased, under Act No. XI of 1859, the mahál [or share of a mahál] specified below, standing in the taují of the district of _____ and that his purchase took effect on the _____ day of _____ [being the day after that fixed for last day of payment.]

(Signed) *D. E.*,

Collector.

SPECIFICATION.

(If of an entire mahál.)

Taují number

Name of mahál

Name of the former proprietor

Sadr jama

(If of a share of a mahál.)

Taují number of the entire mahál

Name of the entire mahál

Sadr jama of the entire mahál

Description of the share sold

Subordinate taují number of the share sold

Name of the former proprietor of the share sold

Sadr jama for which the share sold is separately liable.

SCHEDULE B.

FEES.

For filing an application under section 10 or section 11 for opening a separate account for a share of an entire

If the annual jama of the share do not exceed two hundred and fifty rupees—25.

If the annual jama of the share exceed two hundred and fifty rupees, and do not exceed one thousand rupees—at the rate of ten per cent. upon the jama.

If the annual jama of the share exceed one thousand rupees—at the rate of ten per cent. upon one thousand rupees, and two per cent. upon all above that amount.

For filing an application for a deposit of money or Government securities under section 15—half per cent. on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector—half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under section 16—half per cent. of the amount withdrawn.

For filing an application under section 40, 43 or 44 for the registration of an under-tenure or farm.

If the annual rent of the under-tenure do not exceed five hundred rupees—25.

If the annual rent of the under-tenure exceed five hundred rupees, and do not exceed one thousand rupees—at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed one thousand rupees—at the above rate up to one thousand rupees, and at one per cent. upon all above that amount.

ACT No. XII OF 1841.

*An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.**

1. [Repealed by Act No. XIV of 1870.]

2. There shall be no demand of interest or penalty upon any arrear of land-revenue.

ACT No. III (B. C.) OF 1862.

An Act to amend Act XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency).

WHEREAS it is expedient to extend the period allowed for the registry of under-tenures and farms, and to alter the scale of fees

Preamble.

on certain applications for the opening of separate accounts for shares of entire estates, for deposit of money or Government securities, and for registry of under-tenures and farms; It is enacted as follows—

Repeal of Sections 45 and 59, Act XI of 1859. 1. Sections 45 and 59 of Act XI of 1859 are hereby repealed.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

2. Applications under sections 40, 43 and 44 of Act XI of 1859, for registry of tenures and farms created before the passing of Act XI of 1859, must be made within three years of the passing of this Act. Applications for the registry of tenures existing at the time of the passing of this Act, but created after the passing of Act XI of 1859, must be made within three months of the passing of this Act. Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the deed constituting the tenure.

3. The Collector on the part of the Government shall be entitled to demand from applicants under sections 10 and 11, sections 15 and 16, sections 40, 43, and 44 of Act XI of 1859, fees not exceeding the rates specified in the schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

This Act to be read as part of Act XI of 1859. 4. This Act shall be taken and read as part of the said Act XI of 1859.

SCHEDULE OF FEES.

1. For filing an application under section 10 or section 11 of Act XI of 1859, for opening a separate account for a share of an entire estate—

If the annual jumma of the share do not exceed 1,000 rupees, at the rate of ten per cent. upon the jumma. If the annual jumma of the share exceed 1,000 rupees, at the rate of ten per cent. upon 1,000 rupees, and two per cent. upon all above that amount.

2. For filing an application for a deposit of money or Government securities under section 15 of the said Act, half per cent. on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector, half per cent. on the amount drawn.

For filing an application for withdrawal of a deposit under section 16 of the said Act, half per cent. on the amount withdrawn.

3. For filing an application, under section 40, 43, or 44, of the said Act, for the registration of an under-tenure or farm—

If the annual rent of the under-tenure or farm do not exceed 1,000 rupees, at the rate of five per cent. on the rent.

If the annual rent of the under-tenure or farm exceed 1,000 rupees, at the above rate up to 1,000 rupees, and at one per cent. on all above that amount.

PART XXII.

Salt.

ACT No. VII (B. C.) of 1864.

[As amended by Act I of 1873 (B. C.)]

An Act to amend and consolidate the laws relating to the manufacture, possession, transport, and sale of salt in the Provinces under the control of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate the laws relating to the manufacture, possession, transport, and sale of salt in the provinces under the control of the Lieutenant - Governor of Bengal; It is enacted as follows:—

1. This Act may be cited as “The Salt Act, 1864.”

Short title.

2. The Regulations and Acts and parts of Regulations and Acts set forth in the Schedule annexed to this Act, so far as the same relate to the Bengal

Laws repealed.

Division of the Presidency of Fort William, shall cease to have effect, except so far as they repeal the whole or

part of any other Regulation or Act, and except as to acts done and liabilities incurred before this Act shall come into operation.

3. The following words shall have the several meanings hereby assigned to them unless Interpretation. where a contrary intention shall appear from the context, that is to say—

‘Salt.’ The word ‘salt’ shall include every saline substance and preparation used or intended to be used with food.

‘Manufacture.’ The word ‘manufacture’ shall include the preparation or collection of salt.

‘Salt-work.’ The words ‘salt-work’ shall mean any place used or intended to be used for the manufacture of salt.

‘Board of Revenue.’ The words ‘Board of Revenue’ shall mean the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal.

‘Magistrate.’ The word ‘Magistrate’ shall mean any person exercising the full powers of a Magistrate under the Code of Criminal Procedure.

Act I 1873 (B. C.) empowers a second class Magistrate also to inquire into and try all offences punishable under the Act. All powers which may be exercised by a Magistrate under the Act may be exercised by a Magistrate of the first or second class.

Act I (B. C.) of 1873, sec. 1.—All the powers which, under the provisions of the Salt Act, 1864, may be exercised by a Magistrate, may be exercised by a Magistrate of the first or second class, subject to the provisions of s. 20 of the Code of Criminal Procedure.

Ditto, sec. 2.—All offences punishable under the provisions of the Salt Act, 1864, may be enquired into and tried by a Magistrate of the first or second class.

‘Police Officer.’ The words ‘police officer’ shall include all village police officers.

‘Seer.’ The word ‘seer’ shall mean a weight of eighty tolaks.

‘Maund.’ The word ‘maund’ shall mean a weight of forty seers.

When salt is in the possession of a person’s servant or agent on his account, it is in that person’s possession within the meaning of this Act.

Salt in possession of servant or agent.

Where the doing of any act is made punishable by this Act, or by any of the rules to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner

The causing or procuring an act to be done is punishable in the same manner as the doing of the act.

The word 'rowannah' shall mean a written or printed permission duly issued under the provisions of this Act to possess or transport salt.

'Rowannah.'

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Number.

Words importing the masculine gender shall include the feminine.

Gender.

4. Within the provinces under the control of the Lieutenant-Governor of Bengal it shall not be lawful for any person, who is not duly licensed in the manner hereinafter provided, to manufacture salt.

Unlicensed manufacture of salt prohibited.

A Full Bench of the Madras High Court held, that to collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not *per se* acts prohibited by s. 18 of Reg. I of 1805.

'Spontaneous salt' is salt which, produced naturally, requires no process of manufacture to render it suitable for human consumption. *Seemle*. In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise, is an offence.—I. L. R., 3 Mad., 17.

5. Whoever, without a license duly obtained under this Act, shall manufacture, or attempt to manufacture, salt, shall be punished with fine which may extend to five hundred rupees, or with simple imprisonment for a term which may extend to six months, or with both. The use of each salt-work in such unlicensed manufacture shall be a separate offence within the meaning of this section, and each fire or fire-place, or place for collecting salt in any mode, used or intended to be used, in such manufacture, shall be deemed a separate salt-work. The continuing, after conviction and sentence, of the offence mentioned in

Penalty for such manufacture.

the introductory part of this section, shall be considered as amounting to the commission of such offence, and shall be punishable in the same way as such offence.

Confiscation of contra-
band salt, and materials
and implements used
in unlicensed manu-
facture.

6. All materials and implements used or intended to be used in manufacturing salt without a license, and all salt so manufactured, shall be confiscated.

7. The Board of Revenue shall grant licenses to

Board of Revenue to
grant licenses on cer-
tain condition.

manufacture salt in such places in the said provinces and to such persons as they shall think fit. Provided that

no person shall obtain a license to manufacture salt unless he shall have complied with such terms and conditions for securing the payment of the duty hereinafter mentioned as may be required by the said Board.

8. Every proprietor, tenant, under-tenant, and cultiva-

Proprietors and
others to give notice to
the police of unlicensed
salt-works established
on their lands.

tor who owns or holds land on which there shall be any salt-work not licensed under the provisions of this Act, and every naib, gomashita, tehsildar, or other agent employed by

the Government or the Court of Wards or by any private proprietor on such land, shall, within ten days after the existence of any such salt-work shall have come to his knowledge, give written notice of the same to a police officer. If any person bound to give notice under this section shall wilfully omit or delay to give the same, he shall, for every such offence, be liable to a fine not exceeding five hundred rupees for each salt-work.

9. [*Repealed by Act XII, 1882.*]

10. Every licensed manufacturer of salt shall, before he

Licensed manufac-
turer to provide a pro-
per warehouse.

begins to manufacture, provide a proper and secure warehouse, to be approved by the Board of Revenue,

for the purpose of depositing and securing therein the salt to be manufactured; and all salt manufactured by him shall in the first instance be deposited in such warehouse.

11. The Lieutenant-Governor of Bengal shall from

Lieutenant-Governor
may prescribe rules and
penalties.

time to time prescribe rules, which shall be notified in the *Calcutta Gazette*, for regulating the manufacture, depo-

sit, and transport of salt, and for securing the payment of the duty thereon, and shall from time to time fix penalties for infringements of such rules. Provided that no

Proviso. rule shall be repugnant to any of the provisions of this Act, or to any law in force, and that no penalty shall exceed five hundred rupees.

A man's salt was confiscated under Reg. X of 1819 for passing a chowki without getting his pass checked and signed. He pleaded ignorance of the rules. *Raikes and Bayley, J.J.* said: We do not consider the Judge had any power to exempt upon the plea if made good, *as it is the duty of everyone engaged in the trade to acquaint himself with the rules and regulations of Government which regulate the trade.* S. D. A. 1860, p. 261. See note under s. 61, Stamp Act.

The following revised Rules under the Salt Act have been approved:—

NOTIFICATION OF 1ST JUNE 1883, PUBLISHED IN THE
CALCUTTA GAZETTE OF 6TH JUNE 1883.

SECTION V.—*Rules regarding the crediting of fines and disbursement of rewards, Act VII (B.C.) of 1864.*

1. All fines and penalties levied by magisterial officers from offenders against the salt law and the rules published by the Government are to be credited under the head "Law and Justice" in accordance with the orders of the Government of India, Financial Department, No. 2139, dated the 11th August 1879.

2. The Board attach great importance to the prompt payment of all rewards to the informers and seizing officers in salt cases. Rewards should, therefore, be immediately paid from the treasury or sub-treasury, as the case may be, and debited to the Salt Department. The delay which must often occur in realizing the fines and penalties imposed, and before the sanction of the Board can be accorded under section 39 of Act VII (B.C.) of 1864 to the sale of confiscated salt, will thus be obviated.

3. When salt is confiscated, the police should be directed to take charge of the same until the expiration of three months from the date of the final order, when application should be made to the Board for sanction to the sale, and to the credit of the proceeds to the head "Law and Justice." Any small quantities, however, of confiscated salt, less than ten maunds in weight, should be sold at once, as it is liable to loss by wastage. As in the case of fines, the proceeds of such sales should be immediately credited to the head "Law and Justice."

4. Confiscated salt should not be sold for less than the duty; and if the place of sale is within rowannah limits, purchasers should be directed to apply to the Collector for the necessary protective documents in order to enable them to remove the salt if in excess of five seers. In the event of no offer being made sufficiently high to cover the Government duty, the salt, if not exceeding one maund, should be destroyed; if a larger quantity, the Board's orders should be applied for.

5. Except with the special sanction of the Board, the rewards adjudged in salt cases will not exceed the amount of fine imposed, *plus* the value of the salt confiscated in each case. This value will ordinarily be the price for which the confiscated salt is sold. Should the sale, however, be postponed (under rule 3 above), or the salt destroyed (under rule 4).

16. Any salt exceeding five seers in quantity, which may be found within such limits as Penalties for possess- ing or transporting salt without a rowannah. shall be held to be contraband, and as such shall be seized and confiscated. The vessels, packages, and covering in which such salt shall be found, and any animals or conveyances used in carrying it, shall also be seized and confiscated. Any person possessing or transporting, or attempting to transport, such salt, shall be liable to a fine not exceeding five rupees for every maund of salt so seized and confiscated. All persons found in gangs or companies transporting, or attempting to transport, such salt, when the whole quantity exceeds ten seers, shall be liable to the like penalty, and each one of the offenders shall be liable to the whole fine. In the cases aforesaid the fine shall be at the rate of five rupees per maund, according to the quantity of salt seized, whether more or less than one maund.

17. If any person shall possess, transport, or attempt to transport, within the said limits, under a rowannah, a greater quantity of salt than is specified in such rowannah, the excess, as well as the quantity so specified, shall, if such excess be found on weighment to exceed two and a half per cent. on the quantity so specified, be held to be contraband, and as such shall be seized and confiscated. Any person possessing or transporting, or attempting to transport, such salt, shall be liable to a fine of five rupees for every maund of salt in excess of the quantity so specified.

18. Salt being conveyed by a route or to a place other than that specified in such rowannah, shall be seized and confiscated. Any person possessing or transporting, or attempting to transport, such salt, shall be liable to the penalty prescribed in section 16 of this Act.

19. Salt which may have been transported beyond the said limits, shall not again be brought within those limits except under a special rowannah granted under the authority

of the Board of Revenue. Any salt brought within such limits without such special rowannah shall be seized and confiscated, and the persons in whose possession it may be found shall be liable to the penalty prescribed in section 16 of this Act for the possession of contraband salt. It shall be competent to the said Board to withhold or grant such rowannah.

20. All persons possessed of salt specified in a rowan-

Person selling or losing salt within the limits, to certify on the back of the rowannah the quantity sold or lost.

nah, who may sell, lose, or otherwise dispose of any portion of such salt within the said limits, shall certify on the back of such rowannah the quantity sold, lost or disposed of by them.

21. Whoever within the said limits sells, loses, or

Penalty for omitting to certify the sale or loss of salt within the limits.

disposes of salt, and wilfully or negligently omits to certify such sale, loss, or disposal thereof in the manner above described, shall be liable to

a fine not exceeding five rupees for every maund so sold, lost, or disposed of by him, and any salt in his possession, not exceeding twice the quantity sold, lost, or disposed of, may be seized by an officer in charge of the police-station as security for the payment of such fine.

22. If all the salt specified in a rowannah be disposed

If the whole quantity of salt be sold within the limits, or the whole or any part be carried beyond the limits, the rowannah to be delivered up.

of within the said limits, such rowannah shall be delivered up to the officer in charge of the police-station within which the last parcel of the salt shall have been disposed of. If any part of the salt specified in such rowannah be carried beyond the said limits, such

rowannah shall in that case be delivered up to the officer in charge of the last police-station which such salt may have to pass before being carried beyond the said limits.

23. Any police-officer may enter and inspect, at any

Inspection of salt-works by police officers.

time by day or night, any salt-work, or any warehouse or premises in which salt is stored.

24. Any police-officer may arrest any person carrying

Persons carrying salt liable to confiscation may be arrested.

or in possession of contraband salt, and may seize the vessels, packages, and covering, and any animals or con-

25. For the purposes of the preceding section and of sections 16 and 17 of the Act, it shall be lawful for the officer in charge of the police-station within which the salt shall be found to cause the same to be weighed.

26. Any person arrested on the ground that he has been guilty of an offence under this Act, shall forthwith be taken before a Magistrate or Justice of the Peace, who may, if he see reasonable cause, order such person to be detained in custody until the case shall have been disposed of in the manner hereinafter provided. Provided that any person so detained shall be liberated on giving recognizance or security to appear at such time and place as shall be appointed for his appearance.

27. It shall be lawful for the Magistrate of a district or division of a district, on application by a police-officer, stating his belief that salt is manufactured in any place within such district or division contrary to the provisions of this Act, or that salt not specified in a rowannah is kept or concealed in any house, boat, or place in such district or division, to issue a warrant to search for such salt. Such warrant shall be executed in the same way and shall have the same effect as a search-warrant issued under the Code of Criminal Procedure. It shall be lawful for any Magistrate of the town of Calcutta, on the like application in reference to salt believed to be manufactured in Calcutta contrary to the provisions of this Act, or kept or concealed contrary to the provisions of this Act in any house, boat, or place in Calcutta, to issue a warrant, which shall be executed in the same way and shall have the same effect as a search-warrant under Act XIII of 1856 (*for regulating the police of the towns of Calcutta, Madras, and Bombay*).

28. Whenever any officer in charge of a police-station shall have reasonable cause to believe from information (which shall be taken down in writing) that salt is being manufactured in any place contrary to the provisions of this Act, or that salt not specified in a rowannah is kept or concealed in any house, boat, or place, such

officer may, between sunrise and sunset, but always in the presence of another police-officer, enter into any such house, boat, or place, and in case of resistance may break open any door and remove any obstacle to such entry; and may seize and carry away all such salt so found, and all materials and implements used, or intended to be used, in the manufacture, and may arrest all persons concerned in the manufacture, or in the keeping and concealing of such salt. Provided that whenever it shall be necessary to enter any house in such manner, the rules for entering a house in execution of a search-warrant, prescribed in Chapter VIII of the Code of Criminal Procedure, and in the said Act XIII of 1856, shall be observed by the officer effecting such entry.

29. When any salt or other property shall be seized as contraband, any Magistrate within the district or division of a district, wherein the same may be seized, may, upon the information of any police-officer, summon the person in possession of such salt or other property, or to whom the same may belong, to appear before him, and upon such appearance, or in default thereof, may examine into the cause of the seizure thereof, and may adjudge the same to be confiscated.

30. The rules contained in the Code of Criminal Procedure for the trial of cases before a Magistrate, and for appeal against orders passed by a Magistrate, shall be applicable to adjudications under the last preceding section.

31. When any salt or other property shall be seized under this Act as liable to confiscation within the local limits of the town of Calcutta, such seizure shall, upon information exhibited by any police-officer, be heard and determined in a summary way by a Justice of the Peace for the town of Calcutta, and such Justice shall cause the person in possession of such salt or other property, or to whom the same may belong, to be summoned to appear before him, and upon such appearance, or in default thereof, shall inquire into the cause of such seizure, and may adjudge the same to be confiscated.

32. When the confiscation of any salt or other property shall be adjudged under the three last preceding sections, the same shall thereupon belong to, and vest in, Her Majesty, and a warrant shall be issued by the Court to a police-officer, directing him to hold the salt or other property confiscated at the disposal of the Board of Revenue.

33. Any police-officer who shall vexatiously and unnecessarily seize the goods or chattels of any person on the pretence of seizing or searching for contraband salt, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred rupees, or to simple imprisonment for a term not exceeding six months.

34. Whenever any person shall be convicted of an offence against this Act, after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to simple imprisonment for a period not exceeding six months, and a like punishment of imprisonment not exceeding six months shall be inflicted, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

35. All penalties imposed by this Act may be enforced if for offences not committed within the local limits of the town of Calcutta, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by the said Act XIII of 1856 and Act XLVIII of 1860 (*to amend Act XIII of 1856*), or any other Act for regulation of the police of the town of Calcutta in force for the time being.

36. In every case in which an offender shall be sentenced to a fine, the Court which sentences such offender shall direct by the sentence that, in default of payment of the fine, such offender shall be imprisoned for a certain term, which imprisonment shall be in excess of any

other imprisonment to which he may have been sentenced. The term of imprisonment shall be fixed according to the following scale,—that is to say, when the fine shall not exceed fifty rupees, such term shall not exceed two months; when the fine shall not exceed one hundred rupees, such term shall not exceed four months; and in any other case shall not exceed six months. The fine, or any part thereof which shall remain unpaid, may be levied at any time within six years after the passing of the sentence, and the death of the offender shall not discharge from liability any property which would after his death be legally liable for his debts.

37. No charge of an offence under this Act shall be instituted except within six months after the commission of such offence.

Charges within what period to be brought.

38. No writ of *certiorari* shall be issued at the suit of any party out of the High Court of Judicature, to supersede, stay, remove, or in anywise affect any information or judicial proceeding before any Justice of the Peace in pursuance of this Act, and no judgment thereupon shall be quashed except for error of law apparent on the face of the judgment.

Writ of *certiorari* not to affect Justices' proceedings, and their judgments not to be quashed but for error of law.

39. When any confiscation or penalty shall be adjudged under this Act, the Board of Revenue, within three months after final judgment, may call for the proceedings of the case, and if they shall see cause may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof, and direct that the offender be discharged.

Board of Revenue may mitigate penalties.

40. All fines paid or levied under section 35 of this Act shall be at the disposal of the Board of Revenue, and the said Board may appropriate the same or any portion thereof, and the proceeds of any seizure or any portion of such proceeds, to form a fund for rewarding the police of such grades as may be determined by the said Board, and for rewarding informers, and for compensating persons subjected to annoyance or injury by any proceedings under this Act.

Disposal of the proceeds of seizure and fines.

41. No suit, action, or other proceedings shall be commenced against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended suit, action, or other proceeding, and of the cause thereof: nor after the expiration of three months from the accrual of the cause of suit, action, or other proceeding.

42. This Act shall come into operation on such day as the Lieutenant-Governor of Bengal shall fix by notification in the *Calcutta Gazette*.

SCHEDULE.

Regulations and Acts, and parts of Regulations and Acts, repealed.

Number and Date of Regulation or Act.	Title.	Extent of Repeal.
Regulation XX of 1817 ...	For reducing into one Regulation, with amendments and modifications, the several rules which have been passed for the guidance of darogahs and other subordinate officers of police; for modifying the existing rules concerning the resistance or evasion of criminal process, and for requiring further aid to the police in certain cases, from proprietors and farmers of land and their local managers, as well as from the munduls and other heads of villages ...	So much of section 29 as relates to the execution of criminal process in the Salt Department.
Regulation X of 1819 ...	For reducing into one Regulation, with alterations and amendments, the rules at present in force respecting the manufacture, adulteration, importation, transportation, and sale of salt	The whole.

SCHEDULE.—(Continued.)

Number and Date of Regulation or Act.	Title.	Extent of Repeal.
Regulation X of 1826 ...	For removing doubts as to the ap- plication of section 1, Regulation X, 1819, to the district of Goruck- pore. for prohibiting the manufac- ture within any of the districts of Bengal, Behar and Orissa, of noon- chy or any description of saline substance used as a condiment with food, excepting on account of, or with the permission of, Govern- ment, and for providing for the retail sale of salt by Government officers in certain cases ...	The whole.
Regulation IV of 1832 ...	For declaring and explaining the meaning and intention of section 41, Regulation X, 1819 ...	The whole.
Act IX of 1835	Appointment of Uncovenanted Superintendents of Salt Chowkies...	The whole.
Act XXIX of 1838 ...	Regarding the search and seizure of contraband salt ...	The whole.
Act XIII of 1849 ...	To prevent the smuggling of salt into Calcutta ...	The whole.
Act III of 1851	To amend Regulation X of 1819, and Act XXIX of 1838, for pre- venting the unlawful manufacture and transportation of salt ...	The whole.

ACT No. XII OF 1882.

An Act for regulating the duty on salt and for other purposes.

WHEREAS it is expedient to amend the law relating to
the levy of duty on salt, and to the
import and transit of salt, and the
manufacture of salt and saltpetre, into, over and in British
India ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.
Commencement.

1. This Act may be called “The
Indian Salt Act,” 1882 ; and it shall
come into force at once.

This section, sections two, seven and eight, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India ;

Local extent.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Punjáb and the Chief Commissioners of Oudh, the Central Provinces and Ajmir and Mairwára, to the Province of Sindh, to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India ;

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended, by order of the Governor General in Council published in the *Gazette of India*, to any part of British India other than the territories, province and districts mentioned in the third paragraph of this section.

Power to extend Act.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof ; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.

Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context,—

the expression ‘the said territories’ means the territories to which the section of this Act, in which that expression occurs, for the time being extends ;

‘Assistant Commissioner’ means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the

‘Assistant Commissioner.’

powers of an Assistant Commissioner under this Act ;

‘Salt-revenue officer’ means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act ;

‘Saltpetre’ includes rasi, sajjí and all other substances manufactured from saline earth, and khárí-nún and every form of sulphate or carbonate of soda ; and

‘manufacture of salt’ includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor General in Council—

6. The Governor General in Council may, from time to time, by rule—
 (a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories ;

to regulate manufacture and refining of salt and saltpetre ;

(b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—

License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	Rs. 50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (<i>khárinún</i>) by solar heat in evaporating pans	10
License to manufacture sulphate of soda (<i>khárinún</i>) by artificial heat	2
License to manufacture other saline substances	2

(c) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

CHAPTER III.

DUTY AND PRICE OF SALT.

7. The Governor General in Council may, from time to time, by rule consistent with this Act—

(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India;

(b) reduce or remit any duty so imposed, and reimpose any duty so reduced or remitted;

(c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

to fix minimum price of salt excavated, &c., by Government.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

Governor General's Notification, No. 1449, dated the 10th March, 1882.—In exercise of powers conferred by Section 7 of the Indian Salt Act, 1882, the Governor General in Council directs that, on and after the date of this notification, the duty to be paid on salt manufactured in or imported by land into any part of British India, except Burmah and that portion of the territories administered by the Lieutenant-Governor of the Punjab which lies west of the river Indus, shall be Rupees Two for each maund of 82 $\frac{2}{7}$ lbs. avoirdupois weight.

2. The Governor General in Council further directs that not less than two copies of a notice, in the vernacular language of the district, stating that salt-duty has been reduced from Rs. 2-14 (or Rs. 2-8, as the case may be) to Rs. 2 per maund, shall be issued by each Local Government to every town and village within its jurisdiction to which the reduction applies, and shall also be made public in such other manner as the Local Government may deem fit.

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.

Power of Local Government to fix minimum price of salt excavated, &c.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

9. Whoever commits any of the following offences (namely):—

Penalties.

(a) does anything in contravention of this Act or of any rule made hereunder;

(b) evades payment of any duty or charge payable under this Act or any such rule; or

(c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both ;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

10. Any person convicted of an offence under section nine, after having been previously convicted of an offence under that section or section eleven of the Inland Customs Act, 1875, or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section nine ;

and every such person shall, upon every subsequent conviction of an offence under section nine, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

11. A charge of an offence under section nine, or under section eleven of the Inland Customs Act, 1875, shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a Sub-Inspector,

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

12. All salt or saltpetre in respect of which any offence mentioned in section nine has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five seers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five seers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five seers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section nine has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed exceeds five seers in weight, to the Commissioner of the Division in which such penalty is imposed, and if such salt does not exceed five seers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamíndár or other proprietor of land, and any agent of a zamíndár or proprietor of land, who wilfully connives at any offence mentioned in section nine, shall,

Punishment for connivance at offences mentioned in section nine.

for every such offence, be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Any Salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to search places where article is manufactured under license.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act,

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section nine has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any Salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Power to arrest.

18. Whenever any Salt-revenue officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

Procedure of officer having reason to believe unlawful manufacture.

such officer shall first record in writing (so far as may be practicable) (a) the name, residence, and calling of the informant (if any); (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (c) the name of the person by or for whom the salt or saltpetre is being so manufactured, refined or stored; and (d) the

supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored ;

and may then summon in writing the officer in charge of the Police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him ;

and may then, after sunrise and before sunset (but always

Power to enter and search. in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house,

boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored ;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry ;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre ;

and may also detain and search, and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

19. Any officer in charge of a Police-station who, on application in writing made by a Salt-revenue officer to attend for any of the purposes specified in section eighteen. refuses or fails within a reasonable time so to

Failure of police-officer to attend.

attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

20. Whenever a Salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section eighteen shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five seers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section twelve.

If the article seized does not exceed five seers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

22. Any article in respect of which a penalty is imposed under section thirteen may be detained depending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the Salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained, it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty the amount of which has been deposited under the second clause of this section is sanctioned, or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall of person arrested. (unless such person has been dealt with under the penultimate paragraph of section twenty) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue officers in the execution of this Act.

25. Any Salt-revenue officer who—
 (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place ;

Vexatious search, seizure, &c., by Salt-revenue officers.

(b) vexatiously and unnecessarily detains, searches or arrests any person ;

(c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ;

(d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall, for every such offence, be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information, and so causing a search to be made under this Act, shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years or with both.

26. The Governor General in Council may, from time to time, make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Power to regulate seizures and disposal of things seized.

Such rules may, among other matters, provide—

(a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale ;

(b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale ;

(c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such

CHAPTER VI.

MISCELLANEOUS.

27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Power to prohibit import and transit of salt.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

28. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may, from time to time, make rules consistent with this Act to regulate the following matters, namely :—

(a) the persons by whom, and the time, place and manner at or in which anything to be done under this Act shall be done ;

(b) the cases in which and the officers to whom, and the condition subject to which orders given by Salt-revenue officers under this Act shall be appealable ;

(c) the fee to be charged on account of any license, pass, certificate, dakhila, rowannah or other such document issued under this Act ;

and generally to carry out the provisions herein contained.

29. All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Publication of rules.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue officers.

Power to confer powers of Assistant Commissioner and Salt-revenue officers.

Amendment of Madras Act VI of 1871.

31. For section eleven of the Madras Salt Excise Act, 1871, the following shall be substituted:—

“11. The excise-duty on salt manufactured in any district, or part of a district, to which this Act may be extended, shall be paid under such orders as the Board of Revenue from time to time makes in this behalf; but no such duty shall be leviable until the salt is about to be removed from the place of storage, and no salt shall be so removed without a permit authorizing its removal from store, and such permit shall specify the quantity to be removed and the excise-duty levied or due thereon.”

Levy of duty on salt.

SCHEDULE.

(See Section 2.)

ENACTMENTS REPEALED.

Acts of the Governor General in Council.

Number and year.	Short title.	Extent of repeal.
VIII of 1875	The Inland Customs Act, 1875.	The whole.
II of 1876	The Burma Land and Revenue Act, 1876.	Section 39, clause (b) and in clause (c) of the same section the words and letter “under clause (b).”
XVIII of 1877	The Salt Act, 1877.	The whole.

Regulation.

III of 1877	The Ajmír Laws Regulation, 1877.	Sections 36 and 37.
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Act of the Lieutenant-Governor of Bengal in Council.

VII of 1864	The Salt Act, 1864	Section nine.
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PART XXIII.

Settlement.

REGULATION VIII OF 1793.

*A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the zamindars, independent taluqdars, and other actual proprietors of land, in Bengal, Bihar and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.**

1 to 3. [*Repealed by Act No. XVI of 1874.*]

4. The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether zamindars, taluqdárs or chaudhris.

5 to 12. [*Repealed by Act No. XVI of 1874.*]

13. Taluqdars ordered to be separated are not to be permitted to pay the revenue assessed upon their lands through the zamindars or other actual proprietors of estates, as heretofore.

14. Taluqdars who, in consequence of the rules in sections 5 and 9,† may be separated from the zamindars or other actual proprietors of estates, through whom they

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts. Act No. XV of 1874.

† Sections 5 and 9 (repealed by Act XVI of 1874). are as follows :—

5. *First.*—The taluqdars to be considered the actual proprietors of the lands composing the taluqs are the following :

Second.—Taluqdars who purchased their lands by private or at public sale, or obtained them by gift from the zamindar or other actual proprietor of land to whom they now pay the revenue assessed upon their taluqs, or from his ancestors, subject to the payment of the established dues of Government, and who received deeds of sale, or gift of such land, from the zamindar, or sanads from the khalsa, making over to them his proprietary rights therein.

heretofore paid their revenues, are to pay their revenue in future immediately into the Collector's treasury ; except in districts where, from the number of taluqs or other cause, this mode would be attended with considerable inconvenience, in which case tahsildars, or Native Collectors, are to be appointed to receive the revenue of the taluqs in such districts.

15. Zamindars or other actual proprietors of land, from whose zamindaris or estates taluqs may be separated, shall not be appointed tahsildars to receive the revenue of the taluqs so separated, but the office of the tahsildar shall, in every instance, be given to some other person of character and responsibility, and the whole of the expense of it is to be defrayed by Government.

The words ' proprietors of lands,' as used both in the Bengal Code of 1793 and in the Madras Code of 1802, have a technical signification. They refer to " zemindars, independent taluqdars, and others who pay the revenue assessed upon their estates immediately to Government." 14 B. L. R., 115.

-16 to 18. [*Repealed by Act No. XII of 1876.*]

Third.—Taluqdars whose taluqs were formed before the zamindar or other actual proprietor of land to whom they now pay their revenue, or his ancestors, succeeded to the zamindari.

Fourth.—Taluqdars, the lands comprised in whose taluqs were never the property of the zamindar or other actual proprietor of the soil to whom they now pay their revenue, or his ancestors.

Fifth.—Taluqdars who have succeeded to taluqs of the nature of those described in the preceding clauses, by right of purchase, gift or inheritance, from the former proprietor of such taluqs.

* * * *

9. The rules in section 5, respecting taluqs, have also been extended to aima lands liable to the payment of a fixed quit revenue, denominated malguzari aimas ; and, agreeably to the distinctions laid down in that section, it has been ordered that such malguzari aima tenures as are held under grants of the Muhammadan Government previous to the Company's accession to the Diwani, or which have been since granted by proprietors of estates for a consideration received by them, are to be separated from the proprietors to whom their revenue is now paid, as coming within the spirit of the rules for the separation of taluqdars who are proprietors of the lands composing their taluqs. But malguzari aima tenures which may appear to have been *bonâ fide* granted for the purpose of bringing waste-lands into cultivation, shall continue included in the estates to which they are now annexed, as coming within the rules in section 8, respecting jangalburi taluqs.

19. Istimrardars, however, who have not got possession of their lands to the exclusion, or without the consent, of the actual proprietors, as the mukarraridars mentioned in section 18 are supposed to have done, but hold them of the proprietors on patta or lease, are to be considered as a species of patta taluqdars, and the settlement is to be made with them as hereafter specified.

20. The exceptions to the general order for the conclusion of the decennial settlement with the actual proprietors of the soil, contained in section 4, include the following descriptions of persons: females excepting those whom the Governor General in Council may judge competent to the management of their own estates, minors, idiots, lunatics, or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature; provided, however, with regard to the whole of these descriptions, that they are not partners in the zamindaris, independent taluqs or other estates held by them, with others of a different description, in which case themselves or guardians are allowed, with their partners, to engage for the settlement of their lands and elect a joint manager, under the restrictions hereafter mentioned.

21. The lands of disqualified proprietors, coming within the above descriptions, are to be managed for the benefit of the proprietors, by persons appointed to the trust by Government.

22. A further exception has been made to proprietors in balance to Government, and unable to pay the arrears due from them; in which instances, no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held khas, for a period of three years, at the discretion of the Collector.

23 to 25. [*Repealed by Regulation XVII of 1805.*]

26. The determination of the majority of the proprietors present, under the restrictions specified in section 23,* is also to be binding on the remainder, in agreeing or disagreeing to the jama proposed for undivided estates. The sharers, however, if dissatisfied, may obtain a division of their lands and a proportionate allotment of the revenue assessed thereon but at their own expense.

27. When a portion of land stands in the joint names of several proprietors, or of one for many, but each proprietor has his separate share in his own possession and management, or in that of an agent for him, the settlement is to be made for each share with the person in possession, and his land is to be held exclusively responsible for the revenue assessed upon it.

28, 29. [*Repealed by Act No. XII of 1876.*]

30. Where the property in lands is disputed, the settlement is to be made with the proprietor in possession, under an express declaration that he is nevertheless liable to the claims upon the estate, which is to be transferable to any other person to whom the property may be subsequently adjudged.

31. If a case should occur, in which none of the claimants shall have been previously in possession, they are to be allowed to appoint a manager until their claims shall have been determined in the Diwani Adalat of the zilla: but if they should not agree to a manager the lands are to be held khas, and the surplus-produce,

* The section referred to is as follows:—23. Where more proprietors than one possess an undivided estate, and the whole of them be not within the description of disqualified landholders specified in section 20, the settlement is to be made with them jointly, and they are to be required to elect a sarbarahkar or manager, who shall have the exclusive management of their lands during the continuance of his appointment. The determination of the majority of the proprietors, or of the majority of those present in the event of the absence of any, is to be binding on the remainder in the choice of a manager; and when the votes of the proprietors are equal, the election of the manager is to be determined by the greater interest of the proprietors in the property. If in any case the interest also be equal, the manager is to be appointed by the Board of Revenue.

after discharging the revenue, is to be kept in deposit, until the right of property shall be adjudged.

32. Where disputes exist concerning the boundaries of land, they are to be left to be adjusted in the Diwani Adalat, and the settlement is to be made in the meantime for the lands in possession of the disputing parties respectively.

33. The special rules for fixing the assessment of the three Provinces respectively, adapted to the local circumstances of each, commence with section 68, and the following general rules have been prescribed in addition thereto.

34. The allowances of the kazis and kanungos, heretofore paid by the landholders, as well as any public pensions hitherto paid through the landholders, are to be added to the amount of the jama, and in future paid by the Collectors of the Revenue of the several zillas, on the part of Government, under the rules and restrictions laid down for their guidance, with regard to such payments, in the resolutions passed by the Governor General in Council on the 10th June, 1791, and re-enacted with modifications by Regulation XXIV, 1793.*

35. The assessment is to be fixed exclusive and independent of all duties, taxes and other collections, known under the general denomination of sair; the collections made in the ganjes, hats and bazars, situated within the limits of the town of Calcutta excepted, and excepting also the collections confirmed to the proprietors and holders of ganjes, bazars and hats, by the resolutions passed by the Governor General in Council on the 11th of June, 1790.

‘Sair’ means duties levied on personal property or transit of goods as opposed to that levied on land. Many such duties had been imposed by the zemindars, and they were abolished by Reg. XXVII of 1793.

36. The assessment is also to be fixed exclusive and independent of all existing lakhiraj lands, whether exempted from the lakhiraj (or public revenue) with or without due authority.

* Repealed by Act No. XXII of 1871.

37. The above exception, however, is not meant to include the *málikána* lands in Bihar, or the *nankar*, *khamar*, *nij-jot* and other private lands of the zamindars and independent taluqdars or other actual proprietors of land, in Bengal and Mednipur, regarding which the following rules have been prescribed.

‘*Nankar*’ literally means bread allowance. It was an allowance in money or land to zamindars, kanungos, and others.

38. Where the zamindars or other actual proprietors of land in Bihar have resigned, or have been deprived of the management of their lands, retaining possession of a tithe as *malikana*, the latter is to be re-annexed, and the zamindars or other actual proprietors are to be required to engage for the whole of their estates including the *malikana* lands; unless such lands be held as *malikana* under grants made or confirmed by the Governor General in Council, or the supreme authority of the country for the time being, and have been sold or mortgaged, and given in possession to the mortgagee, in which case they are to be exempted from this rule.

Grants for *malikana* lands not made or confirmed by the supreme authority of the country, are declared invalid by the Regulations passed on the 8th August, 1788.

If the Collectors, however, should be of opinion that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue.

39. The *nankar*, *khamar*, *nij-jot* and other private lands, appropriated by the zamindars, independent taluqdars and other actual proprietors of land, in Bengal and Orissa, to the subsistence of themselves and families, shall be also annexed to the *malguzari* lands, and the ten years’ *jama* fixed upon the whole under the following modification; that such proprietors as may decline to engage for their lands be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, pro-

vided they shall prove, to the satisfaction of the Board of Revenue, that they held them under a similar tenure previous to the 12th August, 1765, the date of the grant of the Diwani to the Company, and have hitherto been permitted to keep possession of them, whenever their zamindaris or estates have been held khas or let in farm, but not otherwise.

In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction adequate to the net produce of such lands is to be made from the amount of the allowance fixed for excluded proprietors by section 44.

40. The above consolidation of the malguzari and private lands is also to be made in the taluqs continued under the proprietors on whom they have hitherto been dependent; not, however, with a view of increasing the rents of the taluqdars, but in order to make the whole of the lands composing their taluqs answerable for their proportion of the public assessment allotted thereon.

41. The chakaran lands, or lands held by public officers and private servants in lieu of wages, are also not meant to be included in the exception contained in section 36. The whole of these lands in each Province are to be annexed to the malguzari lands, and declared responsible for the public revenue assessed on the zamindaris, independent taluqs or other estates in which they are included, in common with all other malguzari lands therein.

See notes under s. 15. Reg. XXXVII. 1793.

In the case of *Joykissen Mookerjee v. The Collector of Burdwan* (10 Moore's I. A. 16) it was contended by the former that the chaukidar was liable to perform none but zamindari duties, and by the latter that he was liable for police duties only. The District Judge found he had been doing both police and zamindari duties. The Privy Council held that the public were interested in the maintenance of these chaukidars; that the zamindar had the right to nominate them, and could require from them *such services as, by usage in the zamindari of Burdwan, chaukidars had been accustomed to render to the zamindar*, but that he could not take possession of them for his own purposes and hold them discharged from the obligation to which they were subject. The Judge found that, although the lands were included in the mal estate, yet they were excluded from the rental paid under the Permanent Settlement, and therefore the zamindar could not claim something for which he

had not given an equivalent. For the zamindar it was contended that the lands had been allotted for the maintenance of gram suranjam paiks, whose services were *chiefly* employed in collecting the zamindar's revenue. It was urged for Government that, although, by s. 41 of Reg. VIII of 1793, the chakaran lands held by village watchmen and by zamindari paiks were annexed to the estate of the zamindar, the rents of those lands were not included within the assets on which the settlement was based; that if the lands had been handed over to the zamindars to be dealt with as they thought fit, the Legislature would not, by Reg. XXII of 1793, passed on the very day on which the Decennial Settlement was made perpetual, have given the darogah jurisdiction over the chankidar, a jurisdiction repeated in Regulation XX of 1827. The High Court held, that the lands in dispute had been held on the condition of performing services both to the village community and to the zamindar. The land granted to village watchmen was always excluded from the calculation on which the Government demand was based, as also was the land granted to zamindari paiks. In 1791, the decennial settlement of Burdwan, founded on the jama of 1790, was effected, and these lands were not within the assets on which the settlement was based. The ownership of the soil was at the same time declared to be with the zamindars, and it became necessary for Government to determine to whom the land held by the chankidars and zamindari paiks belonged. With that object, by s. 41 of Reg. VIII of 1793, it was declared, "that the chakaran lands, or lands held by public officers or private servants in lieu of wages, are not included in the exception contained in s. 36," which declares the assessment fixed, exclusive and independent of all existing lakhiraj lands. "The whole of these lands in each province are to be annexed to the malguzari lands, and attached responsible for the public revenue assessed on the zamindaris, &c." The question then arises as to the meaning of this law. The High Court held that the transfer was not absolute, but subject to all those burdens with which the common law or custom had burdened them; but when the public service or private convenience no longer requires that they should be so burdened, the right of resuming and assessing them will be with the zamindar as owners of the estate in which they are settled. In short, the lands of the village watch were transferred to the zamindar subject to the burden of supporting that watch so long as the public service required it. At the same time the High Court held that the zamindar could resume the lands of zamindari paiks at his pleasure. It is often difficult to decide who are village watchmen, and who zamindari paiks. Where a ghatwalee tenure existed in its present form before the decennial settlement, the zamindar was held to have no right to resume the lands on the mere suggestion that the services have ceased, or that they are no longer necessary. There would be no right of resumption, even if the Government, who had clearly a joint interest with the zamindar in the continuance of the services when necessary, were not (as in this case) disputing the zamindar's right.

If the auction-purchaser, who has acquired the right of the zamindar, has any right at all to destroy the tenure, it must be by virtue of s. 41, Reg. VIII of 1793, relating to chakaran or service land. The omission of words of inheritance does not show conclusively that the sanad was not hereditary.—2 Suth. P. C., 491.

Where a sanad granted to the holder of a jagir was only a confirmation by the Government and the Raja of the tenure under which the jagir was held, and authorized the jagirdar to remain in possession and in the performance of the services with his brothers, without describing

the kind of service,—*Held*, that the Raja could not resume the land without proof that the services to be performed by the jagirdar were personal services only to the Raja.—2 Suth. P. C., 713.

Ghatwali tenures are liable to an obligation of service, and consequently, so long as Government requires the services of the ghatwals, the zamindar is not competent to resume the ghatwali lands. At the same time the Government cannot resume the lands, but if the services of the ghatwals be no longer required, the lands will lapse to the zamindar.—S. D. A., 1858, p. 1669.

Where it is pleaded that lands sued for are chaukidari lands, Government should be made a party.—S. D. A., 1860, p. 5.

A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. Apparently a right of occupancy cannot accrue in lands held under a service tenure.—I. L. R., 4 Cal., 67.

See notes under Reg. XXXVII of 1793, s. 15.

Where lands were held for the performance of the following services, that is, the collection of the rents of certain debutter lands and applying those rents for the worship of an idol,—*Held*, that the zamindar could resume the lands (granted by himself) when he ceased to require the services.—9 C. L. R., 288.

See notes under s. 15 of Reg. XXXVII of 1793, where a full account has been given of the case of *Forbes v. Mir Mahomed Taki*.

42. [*Repealed by Act No. XVI of 1874.*]

43. In the event of any proprietor declining to engage for the settlement of his lands at the jama proposed to him, the Collector is to communicate the objections offered, with his opinion respecting them, to

Procedure in case of landholders declining to engage for jama proposed to them.

the Board of Revenue.

That Board is to determine the proper assessment after making such further inquiries as they may think necessary, and the objecting proprietor is to be required to engage for such assessment without further delay; and in the event of his refusal, which is to be given in writing, his lands are to be let in farm or held khas, as the Board of Revenue may in each instance think most expedient.

44 to 47. [*Repealed by Act No. XVI of 1874.*]

48. [*Repealed by Act No. XII of 1876.*]

49. It is to be understood, however, that istimrardars

Certain istimrardars (mukarraridars) of the nature of those not liable to increase of rent, described in section 18,* who have held their land at a fixed rent for more

* Section 18 is as follows:—

18. Mukarraridars holding lands of which they are not the actual proprietors and whose mukarrari grants have been obtained since the Company's accession to the Diwani, and never received the sanction of

than twelve years, are not liable to be assessed with any increase, either by the officers of Government or by the zamindar or other actual proprietor of land, should he engage for his own lands.

With regard to such istimrardars, also, as have not held their lands at a fixed rent for so long a period, if the zamindar or other actual proprietor of land has bound himself by the deed which he may have executed not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive.

50. This last restriction imposed on the zamindar or other actual proprietor of land, in section 49, is not to be considered to preclude the officer of Government or farmer, in the event of the zamindari being held khas or let in farm, from assessing such istimrardars according to the general rate of the district.

Rules to prevent undue exactions from taluqdars.

51. The following rules are prescribed to prevent undue exactions from the dependent taluqdars:—

First.—No zamindar or other actual proprietor of land shall demand an increase from the taluqdars dependent on him, although he should himself be subject to the payment of an increase of jama to Government, except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the taluqdar holds his tenure, or that the taluqdar, by receiving abatements from his jama, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Second.—If, in any instance, it be proved that a zamindar or other actual proprietor of land exacts more from

the Supreme Government, are to be dispossessed and the settlement is to be made with the actual proprietors of the soil under this Regulation.

In cases, however, where such mukarraridars have been in possession of their mukarraris for a term exceeding twelve years, they are to receive during their lives (subject to the pleasure of the Honourable Court of Directors) the difference between the jama at which they held the lands and that which may be now agreed to by the actual proprietors added to the net produce of the authorized sair, resumed or abolished.

a taluqdar than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit, to the party injured.

According to the decision of the Privy Council in the case of *Rani Surnomoi v. Maharaja Satees Chunder Rai Bahadoor* (10 Moore's I. A., 123), the right of an auction-purchaser, under s. 5 of Reg. XLIV of 1793, is limited to raising the rent of a taluq created by the defaulter to what is demandable from it according to the pergunna rates prevailing either at the time when the taluq is created, or at the time when the auction-purchase takes place; and he cannot demand any higher rent, even if, at any subsequent time, such higher rent be in accordance with the prevailing current rate.—I. L. R., 4 Cal., 612.

When grants of land had been made prior to the Permanent Settlement on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zamindar,—*Held*, in a suit by the zamindar to enhance the rents, that, as long as the ghatwals were able and willing to perform the services, the zamindar had no right to enforce payment of an enhanced rent on the ground that the services were no longer required. The ghatwals are dependent taluqdars within the meaning of Reg. VIII of 1793, and are protected from enhancement by cl. 1 of s. 51 of that Regulation.—I. L. R., 3 Cal., 251.

In a suit for enhancement of rent,—*Held*, that, in order to bring a taluq within the scope of s. 51, Reg. VIII of 1793, it was sufficient to show that the tenure existed, and was capable of being registered at the time of the Decennial Settlement, the fact of actual registration not being an essential element in the formation of a taluq.

Held further, that the effect of proof of the existence of such a taluq at the time of the Decennial Settlement is sufficient to throw on the plaintiff the onus of proving that it was held at a variable rent.—4 B. L. R., S. P. C.

Where a zamindar, a purchaser from a mortgagee, sued to enhance the rent of lands (part of the purchased zamindari) which were held on a *ryotti kulimi* tenure, which had existed more than twelve years before the Decennial Settlement, but the holder of which had subsequently accepted a potta from the zamindar,—*Held*, the acceptance of such potta did not debar the tenant from the right of exemption from enhancement to which he was entitled by reason of the nature of his tenure. Such a potta may be confirmatory only, and is not inconsistent with the presumption that a prior title existed.—12 B. L. R., 229.

See also *Boroda Kant Roy v. Chundra Kumar Roy*, 2 B. L. R., 1, P.C.

In a suit by a zamindar for enhancement, brought after Act X of 1859 came into operation, against the holder at a fixed rent of a dependent taluq, the latter is protected from enhancement by the provisions of s. 15 of that Act, notwithstanding decrees pronounced in previous litigation between the parties declaring the zamindar's right to enhance and directing that the rent of the taluq should be assessed at pergunna rates, if it appear that the rent never has been assessed at pergunna rates, and never has been enhanced, but has remained unchanged from the time of the Permanent Settlement.—15 B. L. R., 120.

A *tullubi brahmotter* tenure, which has been held as such from the time of the Decennial Settlement, is such an intermediate tenure as entitles the holder to a notice under s. 51, Reg. VIII, 1793.—I. L. R., 2 Cal., 125.

See also 14 W. R., 251 ; 21 W. R., 439.

See ss. 15 and 16 of Act X of 1859 (ss. 16 and 17 of Act VIII of 1869, B. C.)

52. The zamindar or other actual proprietor of land is to let the remaining lands of his zamindari or estate, under the prescribed restrictions, in whatever manner he may think proper ; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it ; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following.

s. 2, Act X of 1859.

53. No person contracting with a zamindar, independent taluqdar or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an amilnama, or written commission, signed by such zamindar, independent taluqdar, or other actual proprietor.

54.* The impositions upon the raiyats, under the denomination of abwab, mathaut and other appellations, from their number and uncertainty having become intricate to adjust, and a source of oppression to the raiyats, all proprietors of land and dependent taluqdars shall revise the same, in concert with the raiyats, and consolidate the whole with the assal into one specific sum,

* Section 54 is not applicable to that part of Zilla Ramgurh which is included in the Subah of Behar, Reg. IV, 1794, s. 2.

In large zamindaris or estates, the proprietors are to commence this simplification of the rents of their raiyats in the parganas where the impositions are most numerous, and to proceed in it gradually till completed ; but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fasli and Wilayati year 1198 in the Bihar and Orissa districts, these being the periods fixed for the delivery of pattas, as hereafter specified.

55. No actual proprietor of land or dependent taluqdar or farmer of land, of whatever description, shall impose any new abwab or mathaut upon the raiyats, under any pretence whatever.

Proprietors and farmers of land prohibited imposing new abwab or mathaut on raiyats.

Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed ; and if, at any future period, it be discovered that new abwab or mathaut have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

56, 57. [*Repealed by Act No. XII of 1876.*]

58. [*Repealed by Regulation V of 1812, section 3.*]

59, 60. [*Repealed by Act No. XII of 1876.*]

61. [*Repealed by Act No. XVI of 1874.*]

62. *First.*—The annual revenue to be paid to Government from the estates of the proprietors of land with whom a settlement has been or may be concluded, having been declared fixed for ever, and Courts of Justice having been established, with powers to protect them against all demands exceeding that fixed revenue, whether made by the officers of Government or other persons, or by the authority of Government itself, and on the other hand, the grounds on which deductions and abatements were heretofore occasionally obtained by proprietors of estates when their jama was liable to frequent variation no longer existing, neither their rights nor the value of their property can be affected in future by the real produce of their estates being known.

Rules regarding patwaris.

The rules, therefore, hereafter prescribed regarding patwaris, which are framed solely to facilitate the decision

of suits in the Courts of Judicature between proprietors and farmers of lands and persons paying rent or revenue to them, and to guard against any diminution of the fixed revenue of Government or injustice to individuals, by enabling the Collectors to procure the necessary information and accounts for allotting the public jama upon estates that may be divided, agreeably to the principles prescribed in Reg. I, 1793, can be objected to by those proprietors only who may have it in contemplation, in the event of the division or transfer of a portion of their estates, to deprive Government of a part of the fixed revenue, or defraud some of the partners in their estates by obtaining a disproportionate allotment of the public assessment on the several shares, or to oppress the persons paying rent or revenue to them with impunity, by withholding from the Courts of Justice the documents necessary to enable them to afford redress to the complainants. It being essential to the security of the public revenue, as well as of private right and property, and at the same time consistent with the ancient usages of the country and the declarations in the proclamation announcing the public assessment on the lands fixed for ever, that Government should have the means of counter-acting such unjustifiable views, the following rules have been adopted :

Second.—Every proprietor of land who may not have established a patwari in each village
 Proprietors to appoint patwari to keep accounts of each village. in his or her estate, to keep the accounts of the raiyats, as required by the original rules for the Decennial Settlement of the three Provinces, shall immediately appoint a patwari in each village for that purpose.

All proprietors of estates are to deposit in the Diwani Adalat of the zilla, the Collector's kachahri, and the principal kachahri in each mahal or pargana, a list of the patwaris in their respective estates, and the names of the villages, the accounts of which they may be severally appointed to keep. The proprietors are to notify every three months to the Court and the Collector all vacancies that may occur, and the names of the persons whom they may appoint to fill them.

The Board of Revenue are empowered to authorize any proprietor to reduce the number of patwaris in such proportion as they may think proper, in cases in which it may appear to them unnecessary to entertain a separate patwari for each village.

Third.—The patwaris in every estate are to produce all accounts relating to the lands, produce, collections and charges of the village or villages, the accounts of which may be kept by them respectively, and to furnish every information and explanation that may be required regarding them, whenever they may be required by any Court of Justice, to adjust any suit that may be depending before the Court between the proprietor or farmer of the estate and the raiyats, or any persons paying rent or revenue to them, or any other suit.

Fourth.—The patwaris in each estate shall also produce the accounts specified in the preceding clause, and furnish every explanation and information that may be required respecting them, for the allotment of the public revenue agreeably to the principles laid down in Reg. I of 1793, in the event of the whole or any portion of the estates being directed to be disposed of at public sale, or being transferred by any private act of the proprietor or proprietors, or of the estate being ordered to be divided pursuant to a decree of a Court of Judicature, or, where it may be a joint estate, in consequence of the request of one or more of the proprietors.

But no Collector is to require a patwari to attend him and produce his accounts but for the purposes above-mentioned, or in any other cases in which they may be expressly empowered to require them by any Regulation printed and published in the manner directed in Reg. XLI of 1793.*

If any Collector shall require the patwari of any village or villages to attend him and produce the village-accounts for purposes or in cases in which he may not be

authorized to inspect them, the Court of Diwani Adalat, upon the circumstances being represented to it by the proprietor of the estate, is empowered to make an order to prohibit the Collector requiring the accounts, and in the

penalty for breach of prohibition. event of his repeating the requisition, to adjudge him to pay a fine to the proprietor of the estate, of such sum

as to the Court may appear proper, and to levy the fine in the mode in which the Courts are empowered to levy fines from the Collectors in the suits described in section 33, Reg. XIV of 1793.*

Fifth.—When a Collector shall require the attendance of

How Collectors and Courts are to compel attendance of patwaris. a patwari for the examination of his accounts, either before him or any officer whom he may depute for the purpose, he is to serve such patwari with a written notice, under his official signature and the seal of the zilla, to attend with the accounts required, which are to be particularized in the notice.

If he shall omit to attend with the accounts by the limited time, and shall not show good cause to the Collector for the omission, the Collector is authorized to represent the circumstances through the vakil of Government to the Court of Diwani Adalat of the zilla, the Judge of which, provided there shall appear to him sufficient cause for so doing, may order such patwari to be committed to close custody until he produces the accounts.

The Courts are to observe the same process with patwaris who may omit to attend with their accounts when required, for the adjustment of any matter or dispute depending before the Courts.

Sixth.—Patwaris shall be required to swear to the truth

Patwaris may be required to swear to truth of accounts. of the accounts they may produce when deemed necessary; and in the event of the Collector having occasion

to proceed in person, or to depute an officer to examine any village-accounts on the spot, the Judge, upon application being made to him for that purpose by the Collector through the vakil of Government, may grant to him, or to such officer, a commission to swear the several patwaris whose

* Repealed by Act No. XVI of 1874.

accounts are to be inspected, inserting in the commission the name of each patwari to be sworn.

If the Collector shall have occasion to examine the accounts of a patwari at the station at which the Court may be established, he is to cause him to be sworn before the Court, if he shall judge it necessary to require him to make oath to the truth of his accounts.

Seventh.—If a patwari shall have sworn to the truth of

Patwaris liable to be prosecuted criminally for swearing to false accounts in Court of Judicature,

any account that he may have been required to produce before a Court of Justice, for the purpose of deciding any matter before the Court, and the accounts shall afterwards be found to

have been fabricated or altered, or not to be the true accounts, the Judge of the Court is empowered to commit him to be tried for perjury before the Court of Circuit.

Eighth.—If a patwari shall have been sworn before a

or before Collector.

Judge, or before a Collector or the officer of a Collector, to any accounts

that he may have been required to produce before the Collector or his officer, in a case in which the Collector may have been empowered to require him to produce such accounts, and the accounts shall afterwards appear to have been fabricated or altered, or not to be the true accounts, the Collector is empowered to employ the vakil of Government to prosecute such patwari for perjury.

In the cases specified in this and the preceding clause,

Punishment for proprietors or farmers concerned in falsifying accounts.

if it shall be proved to the satisfaction of the Court that the accounts were fabricated, altered or changed, by the orders, or with the knowledge or con-

nivance, of the proprietor or farmer of the estate, the Court shall impose such fine upon the proprietor or farmer so offending as may appear to it proper upon a consideration of the case and the situation and circumstances of the offender.

Ninth.—Upon the accounts of any village being ordered

How proprietors omitting to appoint patwaris are to be proceeded against.

to be produced, if it shall be found that no patwari has been appointed to keep the accounts of the raiyats, in conformity to the rules prescribed

in clause second, the Court, provided it be a case in which

the requisition of the accounts may be authorized, shall fine the proprietor for the first offence in such sum as it may judge proper upon a consideration of his or her situation and circumstances and the nature of the case; and for the second offence twice the amount of the fine for the first; and for the third and every subsequent offence, double the amount of the fine for the preceding one.

If the accounts shall have been required by the Collector, he is to order the vakil of Government to sue the proprietor on the part of Government under this section, for a breach of the rule in clause second.

Tenth.—The rules contained in this section are hereby declared equally applicable to dependent taluqs as to estates paying revenue immediately to Government.

Rules applied to dependent taluqs.

This section was repealed by Reg. XII of 1817, s. 2, as to Katak, the pergunna of Pataspur, and the several pergunnas dependent on it.

63. [*Repealed by Act No. XVI of 1874.*]

64. The proprietors of land, dependent taluqdars and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from their under-renters and raiyats, according to the time of reaping and selling the produce, and they shall be liable to be sued for damage for not conforming to this rule.

Adjustment of mo-fussal kistbandis.

65. No proprietor of land or dependent taluqdar shall contract any engagement with any under-farmer, or authorize any act contrary to the letter and meaning of this Regulation.*

Bar to engagements contrary to Regulation.

66. Zamindars, independent taluqdars and other actual proprietors of land, dependent taluqdars, farmers of land holding farms immediately of Government, and all persons farming lands of the above-mentioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependents and raiyats, are prohibited from taking cognizance of, or interfering in, matters or causes com-

Landholders, &c., not to interfere in matters coming within cognizance of Courts or Magistrates.

* See Reg. V of 1812, s. 3.

ing within the jurisdiction of the Courts of Civil Judicature, or the Courts of Circuit, or the Magistrates, under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the Court of Judicature in which they may be prosecuted for the act may deem it proper to impose and award.

67. *Clauses 1 to 4. [Repealed by Act No. XII of 1876.]*

Fifth.—In the original rules above-mentioned it was also

Collector to attend to spirit of Regulation, where not applicable to particular districts. directed, that if, in any instance, the Regulations should appear inapplicable to the circumstances of any particular district, the Collector should attend to the spirit of them, and carry them into execution in such mode as circumstances might allow, reporting any alterations or modifications which he might deem necessary.

This rule is to be considered still in force in forming any settlements which remain to be concluded, but it is not to be construed to empower the Collector to exercise any judicial authority.

REGULATION VII OF 1822.

A Regulation for declaring the principles according to which the settlement of the Land-revenue in the Ceded and Conquered Provinces, including Katak, Pataspur and its dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising or superintending settlements; for continuing, with certain exceptions, the existing leases within the said Provinces for a further term of five years; for defining, settling and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue-authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent and produce of land.

1. WHEREAS the existing settlement of the land-revenue in the Ceded Provinces will expire with

Preamble.

the present Fasli year, and it has therefore become necessary to declare and enact the prin-

ciples and rules according to which the demand of the State is thereafter to be regulated, and the manner in which future settlements and revisions of settlements are to be conducted:

and whereas a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and intention of Government that, in revising the existing settlement, the efforts of the Revenue-officer should be chiefly directed, not to any general and extensive enhancement of the jama, but to the objects of equalizing the public burthens, and of ascertaining, settling and recording the rights, interests, privileges and properties of all persons and classes owning, occupying, managing or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue payable on account of land, or the produce of land, or paying or receiving any cesses, contributions or perquisites to or from any persons resident in, or owning, occupying or holding parcel of any village or mahal:

and whereas, with these views and intentions, the Governor General in Council has considered it to be expedient and proper, with the exception hereinafter specified, to continue the existing assessment in all cases in which the settlement has been formed with zamindars or other persons acknowledged as proprietors or possessors of a permanent interest in the mahals for which they may have engaged, until a new settlement can be made, combining with the revision of the Government jama and the deliberate investigation of the facts by the determination of which its amount must be regulated a full inquiry into, and a careful settlement of, the rights and interests of all classes connected with the land:

and whereas the same principles are applicable to the district of Katak, the pargana of Pataspur and its dependencies, of which the settlement will expire with the present 'Amali' year:

and whereas it has appeared expedient to make special provision for the early settlement of the district of Gorakpur, the chakla of Azamgarh, the pargana of Pataspur and its dependencies:

and whereas it is also advisable to provide for the revision

of the settlement of the Conquered Provinces, and of the Province of Bundelkhand, pending the continuance of the existing leases :

and whereas it is the desire of Government that the proceedings held, and the records formed, by the Collectors when making settlements, or otherwise specially employed in conducting inquiries of the above nature, should be such as that all demands, claims and suits may be adjudged and determined according to the facts therein stated, until the same shall have been formally altered, or it shall be shown, by the result of a full investigation in a regular suit that the proceeding or record of the Collector was erroneous or incomplete :

and whereas it is necessary to declare and define the powers and authority to be vested in Collectors in the conduct of the said inquiries, and the adjustment of the differences arising out of or made known by them :

and whereas it further appears advisable that the Revenue-officers should, in certain cases, be vested with authority judicially to receive, hear, investigate and determine suits, claims and demands of the above description :

and whereas it appears to be expedient to declare and explain the views and intentions of Government relative to the rights to be enjoyed and exercised by the *sadr malguzars* or persons admitted to engage for the payment of the Government revenue ; and by persons collecting the rents of the land or revenue of Government, without being subject to the payment of any portion of it to the public treasury, such as *jagirdars* and other owners or managers of *lakhiraj* lands ; and it is particularly necessary, in the case of estates held in *pattidari* or *bhaiyachara* tenure, to make further provision for protecting the sharers who have not been admitted to engagements with Government against the encroachments of the *sadr malguzar*, and likewise to secure the latter against the consequences of the embezzlement or misappropriation by the former of the funds whence the Government revenue ought to be discharged.

For the purposes and objects above specified, the following rules have been enacted, to be in force from the date of their promulgation throughout the Ceded and Conquered Provinces, in the district of Katak, the pargana of Pataspur and its dependencies.

2. *First, second, third, fourth and fifth.* [Repealed by Act No. XVI of 1874.]

Sixth.—If any zamindar or other malguzar as aforesaid, who may now or hereafter be under engagement for the payment of the revenue demandable by Government on account of any mahal, shall be allowed by the Revenue-authorities to continue in the management of such mahal after the expiration of such engagement, and shall do or direct any act relative to the cultivation or management of such mahal, or the settlement, assessment or collection of the rents of such mahal, in or on account of any year subsequent to the term of such engagement, such zamindar or other malguzar aforesaid shall be held to be responsible on account of such year for the same revenue as may have been demandable from him for the year preceding, unless otherwise specially agreed upon :

Provided, further, that it shall be competent for Collectors or other officers exercising the power of Collectors, with the sanction of the Board or Commissioner to whom they may be subordinate, at any time, not being more than six months previous to the expiration of a settlement, to call upon the zamindars or other malguzars as aforesaid to declare whether or not they are willing to continue their engagements for the ensuing year ; and if such zamindars or other malguzars shall not forthwith notify their refusal to do so, they shall be held to have agreed to such an extension of their leases at the existing assessment, and so on, from year to year, as aforesaid.

Zamindars or other malguzars who may be allowed to hold on from year to year shall not be chargeable with any additional revenue on account of any year, unless the Collector or other officer exercising the powers of Collector shall notify his intention to revise the assessment on or before the commencement of such year, unless where otherwise specially provided.

See Reg. IX of 1825, s. 2.

3. With respect to estates which are at present let to farm, a settlement thereof shall be made on the expiration of the exist-

Settlements how made.

ing leases for such a period as the Governor General in Council may direct.

A preference shall be given to the zamindars or other persons possessing a permanent property in the mahals, if willing to engage for the payment of the public revenue on reasonable terms :

provided also, that in cases wherein such mahals may be let in farm, the term of the lease granted to the farmers shall not exceed twelve years.

The above rules shall likewise be applicable to estates now held khas.

So in any case wherein the zamindars and other proprietors may refuse to continue their existing engagements, or to enter into new engagements on equitable terms, it shall be competent to the Revenue-authorities to let the lands in farm for such period, not exceeding twelve years, as the Governor General in Council shall appoint, or to assume the direct management of them, and to retain them under khas management during the period aforesaid or such shorter period as may be judged proper :

provided further, that, if in any case it shall appear to the Revenue-authorities that the continuance or admission of any Raja, zamindar, taluqdar or other person who may have engaged, or may claim to engage, for any mahal or mahals, in or to the management of such mahal or mahals would endanger the public tranquillity or otherwise be seriously detrimental, it shall be their duty to report the circumstance to Government, and it shall be competent to the Governor General in Council, by an order in Council, to cause such mahal or mahals to be held khas or let in farm, for such term as may appear expedient and proper, not exceeding the period above specified.*

4. In admitting particular parties to engage, it was in no degree the intention of Government to compromise private rights or privileges, or to vest the sadr malguzars with any rights not previously possessed by them, excepting in so far as their interest in the land for which they may have engaged might

Admission of particular persons to engage for payment of revenue not to bar Revenue-officers from interfering to adjust rights of other persons or classes.

be improved by the limitation of the Government demand, or otherwise by the resignation in their favour of rights previously vested in Government itself, or as it may have been found necessary, with a view to the punctual realization of the public dues, to vest the *sadr malguzar*, by special Regulation, with authority of distraint, or other powers of coercion over the under-tenants.

On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess or be entitled to possess.

In pursuance of this principle, it is hereby declared and enacted, that nothing in the above provisions for extending the existing leases, or in the stipulations of the existing settlements, do or shall be construed to bar the Revenue-officers, duly empowered in that behalf, from interfering to adjust the respective rights of the *sadr malguzars* and their under-tenants; nor shall any claims to a remission or abatement of revenue be admitted on the ground of any decision or order passed in that behalf; but if such decision or order shall operate materially to reduce the profits derived by any *zamindar* or *malguzar* from the *mahal* owned or managed by him, it shall be competent for such *zamindar* or *malguzar* to relinquish his engagements, and the Revenue-officers shall in such case proceed to make a settlement of the *mahal de novo*.

5. *First*.—The provisions contained in the existing Regulations regarding the allowance to *malikana* and *nankar* be made to *zamindars* and other *malguzars* who may be excluded from the management of *mahals* owned or claimed by them, whether as *malikana* or *nankar*, are hereby rescinded.

Second.—The proprietors of estates let in farm or held *khas* shall be entitled to receive an allowance of *malikana*, at such rate as the Board or other Authority exercising the powers of that Board may determine, anything in the existing Regulations notwithstanding: the said *malikana* to be apportioned in cases in which several proprietors may have heretofore held an estate under one common assessment, whether in joint tenancy or otherwise, according to the shares of each respectively:

provided also, that the malikana-allowance granted to the proprietor or proprietors of any mahal shall not in any case be less than five per cent. on the nett amount realized by Government from the lands; nor shall it exceed ten per cent. on that amount without the special sanction of the Governor General in Council;

provided further, that if the said proprietors shall in any case be in the receipt of any perquisite, or the profits of any lands in lieu of the nankar formerly granted to them by the Native Governments or otherwise, in consideration of their proprietary tenure, the amount of such allowance shall be deducted from the malikana to which they are by this section declared to be entitled:

provided also, that this rule shall not apply to such zamindars as may continue in the occupancy of their tenures, whilst the mahal in which they are included is held khas or farmed or of any part of them, that is to say, zamindars who may cultivate or lease their lands and pay the revenue to the farmer or Government officer; nor, without the special sanction of Government, to any malguzar, zamindar or other proprietor or holder of land who may directly or indirectly continue to draw any allowance from the raiyats of the lands farmed or held khas;

provided also, that malguzars not being actual proprietors of the land included in the estate for which they may have formerly been under engagements, though recorded in the accounts of past settlements as zamindars, taluqdars or the like, or being proprietors of a part only of such land, shall not receive the above allowance on the jama of the estate, but shall receive such allowance in lieu of their title of management as it may appear to Government to be equitable to assign, in addition to the malikana to which they may be entitled on account of any lands held by them in actual property, and of which they may not retain the occupancy: and no malikana shall be granted to any sadr malguzar on account of lands the occupants of which may deny his right of property, until he shall have established his right by a regular suit in a Court of Justice, or to the satisfaction of the Board. But in such cases, such provision will be made for the intermediate support of the party, as the Governor General in Council may, on the recommendation of the Board, see fit to direct.

of a mahal was made with the plaintiff, and the proprietors were allowed malikana, it was held that the plaintiff could demand rent from the proprietors for lands cultivated by them as ryots at the same rates as from other ryots, and that, if they held the land as talukdars, plaintiff was competent to oust them from all such lands as were not actually cultivated by them as ryots and make his own arrangement for them. S. D. A., 1858, p. 886.

Third.—Provided also, that if any zamindar or sadr malguzar shall have been called upon by a Collector or other officer exercising the powers of a Collector to state the highest amount of jama for the payment of which he may be willing to engage, and shall have stated the same accordingly, the sum so stated by such zamindar or sadr malguzar, and not the jama ultimately realized by Government, shall form the basis on which his malikana-allowance shall be adjusted; and in such case it shall and may be lawful for the Revenue-authorities to limit the said allowance to five per cent. on the said sum, or to a portion thereof, according to the extent of the proprietary interest possessed by the said zamindar or sadr malguzar.

Provided also, that if a zamindar or sadr malguzar, when so called upon, shall fail to specify or tender any sum as aforesaid, then and in that case the nett revenue derived by Government from the mahal, on account of the year preceding that in which the Collector or other officer aforesaid may make the said requisition, shall be taken as the sum by which the amount of malikana (not being less than five, nor more than ten, per cent. on the same) shall be adjusted.

If the proprietors refuse to state any jama for which they are willing to engage, and the estate is brought under khas management, malikana should be calculated on the assessment of the last year of the proprietor's engagement before the estate was taken under direct management under provisions of s. 4, Reg. IX of 1825. When a re-settlement is completed, malikana must be calculated on the net revenue derived by Government from the mahal on account of the year preceding that in which the Collector made the requisition (Board's letter to Commissioner of Burdwan regarding Majnamuta and Jellamuta estates).

See Reg. IX of 1833, s. 11.

6. *First.*—In cases wherein the existing engagements may be continued under the rule contained in section 2 of this Regulation, it shall and may be lawful for the Revenue-officers may revise settlements of estates of which existing leases shall be extended under section 2, during continuance of such extended lease. Collectors, with the sanction of the Board, to enter at any time in the course thereof on a revision of the

settlement, notwithstanding such continuance of the existing leases, and to adopt such measures as may be requisite for ascertaining and determining the extent and produce of the lands, and the amount of jama properly demandable therefrom, and for procuring and recording the fullest possible information in regard to the rights, interests, privileges and properties of the agricultural community, and to determine the same, with the same powers and authority as they now are or may hereafter be entitled to exercise in forming the settlement of estates open to reassessment.

Second.—The said revision of the settlement shall be made village by village and mahal by mahal; and such number of mahals shall be revised in each year, as the Board, under the orders of the Governor General in Council, may direct.

Third.—Such revision of the settlement shall not operate to disturb the existing engagements during the period for which they may be continued under the provisions of section 2 of this Regulation in so far as such engagements relate to the amount of jama demandable by Government; but the said engagements shall be held and considered to include only such villages and lands as may be specified in the proceedings or accounts of the settlement last concluded; and if on the revision of the settlement of any mahal it shall be found that there has been any material error or concealment of lands belonging to such mahal, the Collector shall be authorized, subject to the orders of the Board, separately to assess the lands so withheld from the knowledge of the Revenue-authorities, in the same manner and with the same powers as he would assess an unsettled mahal:

provided also, that nothing in this or the preceding sections shall be construed to prevent the Revenue-officers from passing and enforcing such orders in regard to the rights and interests to be enjoyed by the different classes or persons connected with any mahal, during the period for which the existing settlement has been extended, as they may or shall be authorized to pass or enforce when adjusting the assessment of an unsettled mahal.

Where, by a sanad, a grant was made of certain mouzas specified as

containing an estimated number of bigahs, a recognition by the Revenue-authorities and Civil Courts of the grantee being entitled to forest land as part of that grant, although much exceeding the estimated area, was held to be binding on Government, and not to be an error within the meaning of Reg. VII of 1822, s. 6. cl. 3.—4 B. L. R., 36, P. C. Settlement Officers should bear in mind this ruling. Excess quantities of land found on measurement cannot always be assessed.

Fourth.—It shall in like manner be competent to the Collectors in the Conquered Provinces, and in the Province of Bundelkhand, to enter on a revision of the settlement under the provisions contained in the preceding clauses of this section, during the continuance of the existing leases.

7. *First.*—When a Collector in the Ceded Provinces or in the Province of Katak shall have completed the revision of the settlement of any mahals under the rules contained in the preceding section, it shall and may be lawful for him, subject to the orders of the Board and of Government, to grant to the proprietors, if willing to engage on adequate terms, renewed leases for such further term of years subsequent to the year 1234, Fasli or 'Amali,' as the Governor General in Council may direct.

Second.—The assessment to be demanded on account of the years subsequent to the year 1234 Fasli, to which leases renewed as above may extend, shall be fixed with reference to the produce and capabilities of the land, as ascertained at the time when the revision of the settlement shall be made, unless under special circumstances justifying a prospective enhancement of the Government demand : *

provided also, that the amount of such assessment shall not be raised above that of the present jama, unless it shall clearly appear that the nett profits to be derived from the land by the zamindars and others who may be entitled to share in the profits arising out of the limitation of the Government demand, will exceed one-fifth of that amount; and in cases wherein any increase may be demanded, the

* Repealed in part by Reg. IX of 1833, s. 2, *infra*.

assessment shall be so regulated as to leave the zamindars and others aforesaid a nett profit of twenty per cent. on the amount of the jama payable by or through them respectively: no abatement on the existing jama will be allowed, unless on the clearest grounds of necessity.

Third.—The pattas granted on such revised settlements

Pattas granted on revised settlement to cover only lands specified. shall be held only to secure the malguzars from further demand, during the term of their respective leases, on account of the lands specified in it, or described in the settlement rubakari of the Collector, with such allowance for error as may be distinctly declared at the time of settlement.

Zamindars and other persons entering into engagements will be required therefore to afford the fullest and most correct information in regard to the raqba of the mahals for which they may engage.

Fourth.—In like manner it shall and may be lawful for

Grant of renewed leases in Conquered Provinces and Bundelkhand. Collectors in the Conquered Provinces and in the Province of Bundelkhand to grant renewed leases for a further term of years subsequent to the expiration of the existing settlement, subject to the same rules, restrictions and provisions as are enacted in the preceding clauses relatively to the Ceded Provinces.

Fifth.—If any zamindar or other sadr malguzar, the

Power to postpone final settlement until expiration of current leases. settlement of whose estate may be revised under the above rules, shall refuse to enter into suitable engagements for a further period beyond the

term of the then current lease, or if after such revision the Revenue-authorities shall, under any other circumstances, deem it expedient to postpone taking further engagements for the payment of the revenue of any mahals until the expiration of the current leases, it shall be competent to them to do so; and in such case, the several rules contained in section 3 of this Regulation, relative to estates of which the settlement will expire with the present year, shall, on the expiration of the said leases, be and be held applicable to such mahals.

Sixth.—The same rules shall also be applicable to the

Rules applied to estates in Gorakhpur, &c. several mahals within the district of Gorakhpur, the chakla Azamgarh,

the pargana Pataspur and its dependencies, as they may respectively become, or be declared, open for re-settlement.

See Reg. IX of 1833, s. 2.

8. Where the waste-land belonging to or adjoining any mahal is very extensive, so as considerably to exceed the quantity required for pasturage, or otherwise usefully appropriated, it shall be competent to the Revenue-officers to grant leases for the same to any persons who may be willing to undertake the cultivation in perpetuity, or for such periods as the Governor General in Council shall determine; and to assign to the zamindars or others who may establish a right of property in the lands so granted an allowance equivalent to ten per cent. on the amount payable to Government by the lessees, in lieu and bar of all claims to or in the waste-lands so granted, or such other perquisites or privileges as by the custom of the country they may appear in such cases entitled to receive.

9.* *First*.—It shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land-revenue, to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community.

For this purpose their proceedings shall embrace the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the lands or the rents of it, care being taken to distinguish the different modes of possession and property and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.

See Reg. IX of 1825, s. 9, *infra*; and Reg. IX of 1833, s. 3, *infra*.

This record shall, in pattidari or bhaiyachara villages or the like, include an accurate register of all the coparceners, not merely the heads of divisions, such as the pattis, thoks or behris, but also, as far as possible, of every person who occupies land, disposes of its produce or receives rent as proprietor or as agent for one or more proprietors holding land and disposing of its produce, or receiving the rents of it in common, with a detailed statement of the interior arrangements adopted by the brotherhood for the distribution of the profits derived from sources common to the coparcenency where any such exist, and for determining the share of the Government jama and of the village-expenses which each parcener is to contribute, or the other modes in which the engaging parcener or intermediate pattidars and behridars collect from the cultivators.

A record shall likewise be formed of the rates per bigah of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable property in the soil, whether possessing the right of hereditary occupancy or not, and the respective shares of the sadr malguzar or other manager, and the cultivator, in lands cultivated, under kankut, batai or similar engagements, with a distinct specification of all cesses or extra collections made by the malguzar or village-manager, or others.

The names of all the village-patwaris and village-watchmen shall also be registered, with a statement of the amount and nature of the allowance assigned to them.

And all lakhiraj tenures shall be carefully recorded, with a specification of the nature of the tenure.

The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the zamindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement, and recorded in the Collector's proceedings, until distinctly altered by mutual agreement, or after full investigation in a regular suit: and all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government jama, shall be held illegal and unauthorized, unless now or hereafter specially sanctioned by Government.

Second.—Provided also, that it shall be competent to Collectors and other officers as aforesaid (subject to the orders of the Board) to grant pattas to the several mufassal zamindars and raiyats or other owners or occupants of land, for the land owned or occupied by them, specifying the amount to be paid by them, and all the conditions attaching to their tenure; and a register of all pattas so granted shall form a part of the rubakari of settlement.

Third.—Provided, however, that if, from the number of estates of which the leases may at once expire in any district or from any other special cause, it shall be found necessary, for the security of the Government revenue, to take engagements from any zamindar, malguzar or farmer, without completing the detailed enquiries above directed, it shall be competent to the Boards of Revenue or other Authority exercising the powers of such a Board to cause engagements for the revenue to be taken in the manner heretofore in use, reporting the circumstances to the Governor General in Council; but the term of the engagements so taken shall not exceed five years, and the rules relative to the revision of the settlements of mahals of which the existing leases have been extended under the provisions of section 2 of this Regulation shall be equally applicable to estates for which such engagements shall be taken.

See Reg. IX of 1883, s. 3.

“A distinct specification of all cesses.”

The fact that a cess leviable in accordance with village custom has been recorded by a Settlement Officer is important evidence of the custom, but not conclusive proof of it. A custom to be valid must be ancient, must have been continued and acquiesced in, and must be reasonable and certain.—I. L. R., 2 All., 49.

In this case it was held that a cess which is not recorded under the general or special sanction of the Local Government cannot, under s. 66 of Act XIX of 1873 (N. W. P. Land-Revenue Act), be enforced in a Civil Court. The cess claimed was a fee on “*karao*” or second marriages by widows of the Ramaya caste.

When the compiler was in charge of the Khorda khas mehal, he proposed the imposition of a fee under the forest rules on outsiders from the Ganjam district and elsewhere, who used to bring large herds of cattle to graze on the Khorda jungles and grazing grounds. There being but

little khas management in Bengal, there is an absence of rules regarding details of administration. A study of the Bombay and Madras systems (where ryotwari is the rule) would ameliorate the management of khas mehals and of estates under the Court of Wards, and would conduce to uniformity of administration. The following ruling under Bombay Act I of 1865 may be found useful:—

Plaintiff erected a hut on public ground in a village in the district of Thana, and lived there annually for a few months, while his cattle grazed on the public grazing ground in that village. He was not the owner or lessee of any land in the village. On being prevented by the Collector of Thana from thus grazing his cattle, plaintiff brought a suit against that officer for a declaration of his right to graze his cattle within the limits, not only of that village, but of any other village in the district of Thana. *Held*, that plaintiff was not entitled to any such right. The phrase "village cattle" in s. 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier, who may choose to squat for a few months on the public ground of a village. That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villages themselves, but in the Revenue Commissioner, whose consent must be obtained.—I. L. R., 2 Bom., 110.

There is nothing illegal or contrary to public policy in the levy by riparian owners of "kontagara," or a charge imposed on boatmen for mooring their boats to a river-bank by driving pegs therein.—9 C. L. R., 279.

With reference to s. 5, Reg. XI of 1825, the soundness of this ruling is open to question. See remarks of Judges in I. L. R., 2 Bom., 19. See also Calc. S. D. A. Rep., 1859, p. 1357, and 6 Moore's I. A., 26. Navigation in navigable rivers is open to the public, and riparian proprietors cannot levy a tax on such navigation or put obstacles in the way of such right. If goods are landed on their banks at places where there are no public roads, rent may probably be demanded. The Judges who decided the above case appear to have overlooked Reg. IX of 1825, s. 9.

Notwithstanding that zamindari cesses cannot be collected until recognized and sanctioned by the Settlement Authorities, there is nothing in Reg. VII of 1822 or Act XIX of 1873 to preclude a Civil Court from taking cognizance of suits seeking a declaration of zamindari rights to such cesses. I. L. R., 1 All., 373; and H. C. R. (N. W. P.), 1870, p. 425.

Where a custom regarding several cesses is alleged, the existence of the custom regarding each cess should be separately inquired into. Parol evidence as to the existence of such customs should be tested by ascertaining the grounds of the witness' opinion. The best proof of custom is instances in which it has been acted on, and documentary evidence that it has been enforced. A custom to be good must be definite. I. L. R., 1 All., 440.

The matter of cesses will, no doubt, be dealt with in the new Rent Act. In a case reported in 3 B. L. R., A. C. 41, it was held that every contract relating to the collection from ryots and payment to the zamindar of an illegal cess is *ab initio* void. In the case of *Bartlett v. Vinor* (Carthew 252) Holt, C. J., said: "Every contract made for or about any matter or thing which is prohibited and made unlawful by Statute, is a void contract." The cess in the above case was a *parohi*, or festival cess.

In a case which occurred in the North-Western Provinces, the plaintiff sued for the right to a bazar site and to possession thereof. The real object of the suit was the collection of cesses in the said bazar. It was

admitted that the cesses had not been sanctioned at the settlement, nor taken into account in fixing the Government revenue. The High Court dismissed the suit as brought for an illegal object.—1 N. W. P. Rep., C. A., 207.

10. *First.*—Of several parties possessing separate heritable and transferable properties in any parcel of land or in the produce or rent thereof, such properties consisting of interests of different kinds, it shall be competent to the Governor General in Council to determine and direct which of such parties shall be admitted to engage for the payment of Government revenue, due provision being made for securing the rights of the remaining parties.

It is further hereby declared and enacted, that it is and shall be competent to the Governor General in Council, in confirming the settlement of any mahal in perpetuity or for a term of years, to determine and prescribe the manner and proportion in which the nett rent or profit arising out of the limitation of the Government demand shall be distributed among the different parties possessing an interest in the lands appertaining to such mahal or in the rent or produce of such lands or mahal.

Second.—In cases wherein any land appertaining to a mahal hitherto recognized as the taluqa, zamindari or the like, of one or more sadr malguzars, may be owned or occupied by other persons holding under the sadr malguzar and possessing an heritable and transferable property therein, or an hereditary right of occupancy subject to the payment of a fixed rent, or of a rent determinable by a fixed principle, if the title of the said sadr malguzar to engage for the revenue be upheld, and generally in cases wherein the tenure of an intermediate malguzar or manager between the Government and the proprietors or hereditary occupants of the soil may be maintained, whether the Government revenue be collected from the zamindar, taluqdar or other hereditary interme-

Power to determine which of several holders of differing interests, having separate properties in same land, shall be admitted to engage, and

to prescribe distribution of profit resulting from limitation of jama.

Mufassal settlements in cases where title of intermediate manager between Government and proprietors or hereditary occupants of soil are maintained.

ciate malguzar, or the mahal be farmed or held khas, it shall be competent to the Collector or other officer who may be employed in adjusting the jama to be assessed on such mahal, with the sanction of the Board previously obtained and subject to the orders and direction of that Authority, to make a mufassal settlement with each of the proprietors or occupants aforesaid for the land possessed by him, and to grant such proprietors or occupants pattas, defining the condition on which they are to hold their land, whether subordinate to the sadr malguzar or to the farmer or officer of Government employed in the khas management; and in all such cases, if engagements for the Government revenue of the mahal be taken from the intermediate hereditary malguzar, the particulars of the mufassal settlement, when approved by the Board, shall be indorsed on the patta to be granted to the sadr malguzar, or shall be so incorporated with the engagement taken from him as to form part of the same.

Third.—In cases in which two or more persons may possess a joint property in any village, mahal or parcel of land, or in the rent of produce of any village, mahal or land, or in any part of such village, mahal, land, rent or produce, the property of such persons consisting of interests of the same kind, whether of the same extent or otherwise, as well as in cases wherein such property in any mahal, village, land, produce or rent may be separately possessed by parties subject by prescriptive usage to common obligations, whether existing or contingent, it shall be competent to the Collector or other officer exercising the powers of Collector, subject to the orders and direction of the Board and of the Governor General in Council, either to make a joint settlement with the parties collectively or a majority of them, or with an agent appointed by them or a majority of them, or to select one or more of them to undertake the management of the mahal as sadr malguzars, due advertence being had to the wishes of all the coparceners and to the past custom of the village or villages comprised in the mahal.

Fourth.—When it shall be determined to make a joint

When joint settle- settlement for any village, mahal or ment to be made, par- parcel of land, with the parties posses- ties how summoned. sing therein a joint property as afore- said, the Collector or other officer making the settlement shall give notice of his intention, by a written proclama- tion to be stuck up in some public place within the village, mahal or land, and shall require all persons possessing therein a property as aforesaid to attend, either in person or by representative duly authorized in the matter, within a reasonable period, at a stated place and time, and to declare their agreement or non-agreement to the jama proposed to be assessed on the village or land.

Fifth.—If any person or persons, when summoned as

Persons wilfully fail- above, shall refuse, neglect or omit to ing to attend when attend, either in person or by repre- summoned, to be bound sentative, such person or persons shall by decision of majority be held to be bound by the decision present. of the majority of those who may

attend, in agreeing or disagreeing to the jama, and his or their interests and estate shall, unless otherwise specially allowed, be held responsible for the Government revenue, and be liable to sale in the event of any arrear accruing on account of the settlement.

Sixth.—If any person or persons shall attend and shall

Treatment of parcen- object to the jama proposed to be ers not joining in set- assessed, then, should a settlement be tlement. made with the other parties present,

the objecting parties shall be left in the enjoyment of the same rights and interests as they would enjoy in the event of the mahal being farmed or held khas; and in so far as regards the lands to which such rights and interests attach, the other parceners, if their engagements be extended thereto, shall be considered farmers of the Government revenue, to hold the same under leases of such term as may be determined and agreed upon under general rules applicable to lands for which the proprietors may refuse to engage.

Seventh.—When any mahal or portion of a mahal, held

Rates of rent of cul- by a number of cultivating proprietors tivating proprietors of in pattidari or bhaiyachara tenure or lands of which revenue the like, shall be let in farm or held collected khas or farm- khas, the rent demandable from the ed.

proprietors of such mahal or portion of mahal, on account of the land occupied and cultivated by themselves, shall be adjusted by the rates payable by raiyats or other resident cultivators not having an heritable and transferable property in the soil, for lands of a similar description in the same or in the adjoining villages, with a deduction of five per cent. on account of malikana, or such other rate, not being less than five per cent., as Government may determine.

Eighth.—When it shall be determined to make a settlement of a mahal of the above description

Liability for default of non-engaging parceners when settlement of mahal made with one or more of them as sadr malguzar.

with one or more of the parceners selected to manage, collect and account for the public revenue as sadr malguzar, then and in that case the interests of the non-engaging parceners

shall not be held answerable for the default of the sadr malguzars, save and except in so far as may be specifically provided.

Such parceners shall, until regularly separated, continue to hold their lands as subordinate proprietors, subject to the payment of rent or revenue to the sadr malguzar at the rates and in the mode heretofore in use, excepting in so far as that usage may be affected by the determination of Government in regard to the distribution of the nett rent or profit derived from the limitation of the Government demand, or by the rules now in force or hereafter to be enacted, for vesting the sadr malguzars with specific powers over the subordinate tenants in the collection of the rent or revenue demandable from them.

The responsibility attaching to the persons selected as sadr malguzars and the conditions under which they are to hold that title of management, will in each case be specifically declared at or after the time when the settlement is confirmed.

The conditions and limitations under which the subordinate proprietors shall be admitted to separate engagements will also be similarly declared.

Ninth.—Provided further, that in all cases wherein different parcels of land belonging to any mahal may be separately owned and occupied by different proprietors or by different bodies of proprie-

Parcels separately owned and occupied may be separately settled.

tors, it shall be competent to the Boards of Revenue or other Authority exercising the powers of that Board to cause a separate settlement to be made for the land owned and occupied by each proprietor, or by each body of proprietors, and each parcel of land for which a separate settlement may be so made shall be held exclusively responsible for the revenue assessed upon it.

Provided also, that if the several parties possessing a joint property or separate properties subject to a common obligation as aforesaid, or any of them, shall apply to a Collector or other officer making or revising a settlement, to have separate possession of their several share or shares in such joint property, or to be admitted to separate engagements, it shall be competent to such Collector or other officer, with the sanction of the Board or other Authority to which he may be subordinate, to make a partition of the property among the different parties according to their respective interests, and to make a separate settlement with each of them or with such as may desire to enter into separate engagements.

Tenth.—In all cases wherein any proprietors may be excluded from engagements, the Collector shall be careful to let it be known that all persons possessing a property in the mahal are entitled to have their names recorded in the rubakari of settlement, with the amount or rate of the assessment demandable from each.

11. *First.*—The Collector's proceedings in forming the registry above directed shall be founded on the basis of actual possession, and that officer shall, in every instance, be careful to record the precise nature of the authority on which the entries in his books may be made.

In conformity with the above principle, it shall be competent to the Collectors or other officers when making or revising settlements, or otherwise deputed to investigate and determine the circumstances of any mahal, and the nature of the tenures connected with it, to correct the errors or omissions of former settlements by admitting to engagements or entering on the public records the names

of the persons found in the *bonâ fide* possession of land or in the receipt of rent under a proprietary title; and in such cases the Collector will hold an official proceeding, explaining fully the grounds on which he may act.

12.* *First.*—In cases in which the proportion of the Government jama and village-expenses payable by each proprietor and by each body of proprietors comprised in the several pattis, behris and other divisions of an estate held under pattidari or baiyachara tenure or the like may have been originally fixed on a measurement of the lands occupied by each, with reference to the quantity in cultivation, and may be liable by the usage of the country to periodical adjustment on the same principle, if the Collector or other officer making or revising the settlement shall be satisfied, by examination of the patwaris' accounts or otherwise, that the contributions paid by any proprietor or body of proprietors as aforesaid are materially in excess of the amount just demandable from them, it shall be competent to him, with the previous sanction of the Board, to cause a new distribution to be made of the revenue and charges payable by each, with reference to the above principle and to such resolutions as Government may have passed relative to the apportionment of the nett rent or profits arising out of the limitation of the Government demand; and in the performance of this duty to employ the kanungo and such person or persons as he may judge it advisable to appoint, and to settle the jama payable by the different parties according to the award of such person or persons, or otherwise as shall appear to be just and equitable.

Second.—In like manner, in cases in which the several proprietors shall be entitled not only to an adjustment from time to time of the jama payable on account of the lands occupied by them, but likewise to a periodical partition of the lands of the village, with reference to the share recorded as belonging to each, it shall be competent to the Collector to cause a fresh partition of

In estates held under pattidari, baiyachara or like tenure, Collectors may re-allot revenue and charges payable by several parceners.

And in certain cases may make fresh partition of land.

* See Reg. IX of 1833, s. 2, *infra*.

the lands and adjustment of the jama to be made as above prescribed, and at the same time to fix and declare the period from which the arrangement as finally settled is to have effect, and to adjust the claims of the parties relative to the revenue intermediately paid by them, as may appear equitable:

Provided, however, that no such partition or adjustment shall be final until confirmed by the Board or other Authority exercising the powers of that Board;

Provided also, that if any parties shall dispute the existence of the usage under which the partition of the lands shall have been made, and shall claim to be restored to possession of the lands which the Collector may have transferred to another, or shall consider himself entitled to the benefit of a new partition of the lands comprised in the mahal to which he may belong, in any case in which the Collector may have refused to order it, it shall be competent to the said party to bring a regular suit in the Zilla Court against the person or persons to whom the lands may have been transferred, or the person or persons who may resist the partition, to try the justness of the Collector's decision; but if the existence of the usage shall be admitted or established, it shall not be competent to the Courts of Judicature to question the accuracy of the partition of the land, or adjustment of the jama;

Cases in which parties affected by Collector's decision may contest in Court.

On what points Revenue-officer's decision conclusive.

and whenever the decision of a Collector for the partition of any land shall be set aside, it will of course belong to the Revenue-authorities to re-adjust the jama with reference to the interests of the parties as defined and settled by the final decision of the Courts of Judicature, and to the conditions of the tenure, and to any general or special resolution of Government relative to the distribution of the nett rent or profit arising out of the limitation of the public assessment.

13. Collectors and other officers exercising the powers

Collectors not to disturb possession unless specially authorized.

of Collectors shall not, unless where specially authorized in the manner prescribed in this or some other Regulation, do any act tending to disturb possession, but shall leave the Adalat to investigate in a regular suit all

claims of persons not in possession, but deeming themselves entitled to be so.

14. *First.*—Collectors making or revising settlements

Collectors making or revising settlements may declare nature and extent of interests of persons occupying land.

shall, in cases in which any dispute may exist in regard to the nature of the tenure of any person occupying the soil, be competent to declare in an official proceeding, to be incorporated

in the rubakari of settlement, the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction, the grounds of his determination ;

so also, in cases of dispute regarding the extent of the interest belonging to any sharer in a village or villages held under pattidari, bhaiyachara or the like tenure, such sharer having actual possession of a portion of such village or villages, or being in the actual receipt as proprietor of a share of the joint profits of the land, it shall be competent to the Collector to decide the point in the first instance in his rubakari of settlement, and to enforce his decision, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the Courts to try the right ;

but nothing herein contained shall be construed to authorize the Courts to interfere with the decision of the Collector in regard to the amount or proportion of jama to be assessed on any parcel of land, or in respect to the quantity and description of land to be assigned in partition to the holder of any specific share of a joint estate.

Second.—The above rule shall not be construed to em-

Cognizance of claims to larger profits, or larger share of village, than hitherto.

power Collectors, unless otherwise authorized, to take cognizance of any claim to receive a larger portion of the common profits than the claimant

has hitherto enjoyed, or to hold a larger portion of the village or villages than he has hitherto occupied.

Third.—The decisions passed by the Collectors under

Maintenance by Courts of decisions of Revenue-officers.

the above powers if not altered or annulled by the Board or by Government shall be maintained by the

Courts, unless on investigation in a regular suit it shall appear that the possession held under such a decision is wrongful; and nothing herein contained shall be understood to authorize any Court to interfere with the decision

of the Revenue-authorities relative to the jama to be assessed on any mahal or portion of a mahal, or to the extent and description of lands belonging to any mahal that may be assigned on the partition of the same to the several parceners concerned.

Fourth.—If any person shall complain to a Collector or other officer making or revising the settlement of any mahal that he has been wrongfully dispossessed from any lands, premises, crops, orchards, pasture-grounds, fisheries, wells, watercourses, tanks, reservoirs or the like, within such mahal, or of the rents, produce or profits of such lands, premises, &c., the like as aforesaid, or that he has been wrongfully disturbed in the possession thereof, it shall be competent to the Collector or other officer aforesaid to inquire into the matter, and if the party so complaining shall appear to have been in possession in the year preceding that in which the complaint is brought, and there shall otherwise be reason to believe that he has been violently or wrongfully dispossessed or disturbed, it shall be competent to the Collector to restore or confirm him, recording the grounds of his determination in a rubakari; and the opposite party shall in such case be left to bring a regular suit in Court to try the question of right.

In like manner should a Collector or other officer as aforesaid find that there exist in any mahal of which he may be making or revising the settlement, any disputes relative to the possession of lands, premises or the like, which it may be expedient to adjust, it shall be competent to the Collector or other officer aforesaid to pass a decision determining the point of possession, leaving the question of right, if further disputed, to be settled by the result of a regular suit in the Adalat.

In a case decided in 1859, the Sudder Dewani Adalat held that the bed of a navigable river,—that is, of a river in which the tide ebbs and flows,—is not, by Reg. II of 1825, which is declaratory of the common law of

the country, the property of any individual, but of the public, and, consequently, the right of fishery in such a river is not private property, but that right is a right common to every person. If, therefore, individuals claim an exclusive right in navigable rivers, they must clearly show that it has been acquired either by grant or by prescription; and until that be shewn, the presumption is strong against the claim advanced. Such claims are in derogation of public right, and the presumption against them and in favour of the right of the public is very strong.—S. D. A., 1859, p. 1357.

Fifth.—The above provisions will be held to apply to all cases in which a zamindar or under-tenant, whether farmer or raiyat, having by special deed or prescriptive title a right of occupancy, shall have been wrongfully ousted from the occupancy of lands held and cultivated by him in the preceding year, or in which the rents and profits of any land which were received by such dispossessed party in the preceding year shall be withheld from him without a legal award, or a voluntary act of the party involving the transfer, renunciation or relinquishment of such rents and profits.

But the above rule shall not apply to any case in which the complaining party may have executed any deed purporting to be a relinquishment of possession, unless it shall have been established by some judicial proceeding that such deed was extorted by force and terror, nor to any cases wherein the complainant shall have in any way lost or relinquished possession previously to the commencement of the year preceding that in which the complaint may be preferred.*

Where the Collector has issued due notice of enhancement of the *jama* of lands in a town and subject to Reg. VII of 1822, and, on failure by the tenant to accept a settlement at the revised rate, an action to eject him has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable, or in any way to interfere with the amount of the revised *jama* as fixed by the Collector. Where the tenant refuses to accept a revised settlement under such circumstances, he is to be entitled to a reasonable time within which to remove a house standing upon the lands in question.—6 C. L. R., 365.

The general right of fishery in a river (when not otherwise defined) is restricted to the channel of a river, and whatever considered to form part of it; it does not extend to adjacent lakes or other pieces of water, occasionally supplied by overflowings of the river, but not actually connected with the channel of it. Where A, having the right of fishery in a reach of a river, took possession of a *jheel* formed by overflows on the

* See Reg. IX of 1833, s. 3, *infra*.

adjacent lands of *B*, he was declared to have no legal right or interest in the *jheel*, it not being connected with the channel of the river, which had not been altered. It appeared that two channels, by which the *jheel* communicated with the river, were only open at particular intervals, when the water was at the highest.—S. D. A., 1808, Vol I, 228.

In the North-West Provinces it has been ruled, under s. 241 of Act XIX of 1873, that the Civil Courts are not competent to try suits to alter or amend a record-of-rights, or to give directions in respect of the same: but they are not debarred from entertaining and determining questions of right, merely because such questions may have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Consequently a claim in the Civil Court for a declaration of the right to make certain collections of rent and to defray therewith certain village expenses, though such right had been the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable.—I. L. R., 1 All., 613.

It is doubtful whether there can be any private right of any fishery in a tidal navigable river.—I. L. R., 1 Cal., 53.

See notes under Act XV, 1877, s. 26, and also under paragraph 4, *supra*.

In a Bombay case the rights of the Crown and of the public in the waters and the subjacent soil of the sea was discussed. It was ruled that the right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct, which prevents another from a fair exercise of his equal right, if injury thereby results to him, is actionable.—I. L. R., 2 Bom., 19.

Lord Chief Justice Hale says (*De Jure Maris*, ch. iv):—"But though the king is the owner of the great waste, and, as a consequence of his propriety, hath the primary right of fishing in the sea and the creeks and arms thereof, yet the common people of England have regularly a liberty of fishing in the sea or creeks or arms thereof, as a public common of piscary, and may not, without injury to their right, be restrained of it, unless in such places or creeks or navigable rivers where either the king or some particular subject hath gained a property exclusive of that common liberty." A subject may, by grant or prescription, have the interest of fishing in an arm of the sea, but the burden of proving it lies on him. (Lord FitzWalter's case, 1 Mod., 105). Since Magna Charta, the Crown cannot exclude the public. Willes, J., in giving to the House of Lords in *Malcolmson v. O'Dea* the unanimous opinion of the Judges, said:—"The soil of navigable rivers, so far as the tide flows and reflows, is *primâ facie* in the Crown, and the right of fishery *primâ facie* in the public."

Erle, C. J., in the *Whitstable Fishers v. Ganns* (11 C. B., N. S., 387, 413) said:—"The soil of the sea-shore to the extent of three miles from the beach is vested in the Crown." It was supposed that a cannon shot, fired from low-water-mark, would reach a marine league. See Bynkershoek's *De Dom. Mar.* ch. ii, p. 127—"ubi finitur armorum vis" or "quousque tormenta exploduntur."

The Calcutta Sudder Dewani Adalat held in 1859 that the bed of a navigable river, where the tide flows and ebbs, must be *primâ facie* regarded as vested in the State, and the fishery in it as open to the public, and refused to recognize either of the riparian proprietors as lords of the

soil of the river, or as entitled to any exclusive or special right of fishing in it. (Calc. S. D. A. Rep., 1859, p. 1357)

In *Chunder Jalleah v. Ramcharan Mookerjee* (15 W. R., 212) decided by the Calcutta High Court in 1871, it was held, that the bed of a river, which was navigable for boats, but where the tide did not ebb or flow, might be the property of a subject. Glover, J., noted, that there is not in India, as in England and Ireland, a Magna Charta or Legislative prohibition of grants by the Crown of a several fishery in a navigable river. Expressing his opinion that the governing power might, in India, make such a grant, he specified instances in which it had done so within the last century in navigable but not tidal rivers (15 W. R., 215). There is a conflict of decisions in America as to whether navigability in fact is navigability in law, *i. e.*, whether tides are necessary to make a river navigable in law. In *Doc d. Sibkristo v. The East India Company* (6 Moore's I. A. 26) the Privy Council were of opinion that the beds of navigable tidal rivers in British India are vested in the State. The rule in Great Britain and Ireland was laid down by Lord St. Leonards in *The Lord Advocate v. Hamilton* (1 Macqueen, H. L., 16). "The rights of the Crown to the *altius* or the bed of a river admit of no dispute. Beyond all doubt, the soil and bed of a river (we are not speaking of navigable rivers only) belongs to the Crown."

The Judges in *Reg. v. Kastya Rama* (8 Boro. H. C. Rep., 67) regarded the sea and its subjacent soil, within the ordinary territorial limit at least around British India, as vested in the sovereign, but held that the use of it for the purposes of navigation and fishing belonged *communis juris* to her subjects, at least so far as it had not been otherwise appropriated by the sovereign; and West, J., in speaking of the prerogatives of the Crown in India in this respect, said: "I am not aware that in any case they have been so used as to exclude any subject, in this country, from fishing in any part of the sea."

A right to fish in the sea is not the subject of presumption. It follows that it is not an easement, nor is it a *profit à prendre in alieno solo*. Such a right cannot be annexed to certain tenements (*per* Willes, C. J., and his colleagues in *Hard v. Cresswell*). In *Warren v. Mathew* (6 Mod., 63) it was held, that every subject of common right may fish with lawful nets in a navigable river, as well as in the sea. Bracton (Lib. I., C. 12, s. 6) says:—"Publica vero sunt omnia flumina et portus. Ideoque jus piscandi omnibus jus commune est in mari et in fluminibus." Selden in his *Mare Clausum* says, that the word "fluminibus" must be limited to navigable rivers which are tidal.

The right of the public to fish in the sea is common, and not the subject of property. But there appears to be no good reason why the principle *sic utere tuo ut alienum non laedas* should not be applied to rights as well as to property. There is a great difference between fair competition and wilful prevention. Customs prevail on the whale fisheries, and they have been recognized by the Courts. In accordance with this principle the Bombay High Court held, that members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and so as not to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if injury thereby results to him, is actionable.

Where a right of ferry is settled with a zamindar, the infringement of that right by reason of the establishment of another ferry by a neighbouring proprietor at a short distance will give a cause of action; and the owner of the new ferry will be restrained from carrying over in his boats, whether for hire or otherwise, persons other than his own

servants, or persons lawfully engaged upon his business or going to his premises.—3 C. L. R., 427 ; see also 16 W. R., 281.

15. In the settlement of any resumed mahal held or

In settling resumed mahals, Collectors may take cognizance of claims to property therein.

pretended to be held under sanads from the ruling power, or from the amils or other officers of the Government whether such lands shall have

been heretofore subject to the payment of revenue or otherwise, it shall be competent to the Collector or other officer making the settlement to hear, try and determine all claims to the property and possession of the land comprising such mahal, or the rents or produce thereof, anything in the existing Regulations notwithstanding, and subject

And may give possession to parties appearing to have best title.

to the orders and direction of the Board of Revenue or other Authority exercising the powers of that Board

to give possession to, and conclude a settlement with, the party who may appear to have the best title, leaving other claimants to establish their claims by a regular suit in the Zilla Court, by which all decisions passed by the Revenue-authorities under this section may, on such suit being fully heard, sued and determined, and not otherwise, be revised, annulled or altered.

The above rule shall not extend to lands held free of assessment under grants made by or

Limitation of rule.

at the request of the proprietors themselves or their representatives, the settlement of which shall ordinarily be made with the parties in possession, if willing to engage on adequate terms.

16. It shall be competent to the Governor General in

Power to grant to Collectors making or revising settlements special authority to take cognizance of claims to property and possession of land.

Council to grant to a Collector making or revising the settlement of any mahal, whether the same may have been held by a lakhiraj tenure resumed, or being malguzari, may have become open to resettlement in ordi-

nary course, special authority to hear, try and determine as above all claims to the property and possession of the lands lying within such mahal or the rent or produce thereof, and to give possession to the party who may appear to have the best title, subject to the orders and

direction of the Board, and further subject, as above, to the revision of the Zilla Court on a regular suit;

provided also, that whenever special authority may be given to any Collector as aforesaid, notice of the order of Government shall be published by a proclamation within the mahals to which the authority so given may extend; and it shall be the duty of the Collectors and the Boards* to see that such proclamation is duly made.

But no decision passed by a Collector under this or any other section whereby such notification is required, shall be disturbed by any Court of Judicature otherwise than after a full and regular investigation of merits on the plea that proclamation was not made.

17. It shall be competent to Collectors and other officers

Power to take cognizance of claims to property in lands held lakhiraj, or at a mukarrari jama, under valid tenures, and to settle with proprietors on behalf of lakhirajdar or mukarraridar.

engaged in making or revising the settlement of any pargana, mauza or other local division, on the application of persons claiming a right of property in lands held free of assessment, or at a mukarrari jama, under unquestioned grants from the ruling power, or from the amils or other

officers of Government, and situate within or adjoining to such pargana, mauza or other local division, to receive, try and determine the claim; and if satisfied that the applicants do possess or are entitled to possess an hereditary and transferable property in the land or the produce or rent thereof, the Collector or other officer, with the sanction of Government previously obtained, shall be authorized to conclude a settlement with them on behalf of the lakhirajdar or mukarraridar, for such period as the Governor General in Council may direct, and shall grant to each of the said proprietors pattas, defining the conditions on which they are to hold their lands subordinate to the lakhirajdar or mukarraridar.

It shall further be competent to the Collector, under the orders of the Board, to fix and declare the amount of malikana or other proprietary allowance to be paid by such lakhirajdars or mukarraridars to the said proprietors, in

* *Sic.* read "Board."

the event of their being divested of the occupancy and management of their lands:

provided, however, that either party who may be dissatisfied with the decision of the Collector as to the question of the right of property, shall be at liberty to contest the same in a regular suit in the Adalat; but the Court shall not interfere to alter the terms on which the settlement may have been made by the Collector with proprietors or the amount of malikana granted to such persons.

18. The Collector shall in cases of doubt be the judge of the question of jurisdiction, subject to the orders of the Board and of Government; and the Courts of Judicature shall not disturb possession given by the Collector, except on a regular suit, and on a decision as to the right.

19. *First.*—It shall be competent to Collectors, when prosecuting the above inquiries or hearing and trying the above suits, or otherwise when authorized in that behalf by the Board to which they may be subordinate, to require all sadr malguzars and other persons owning, occupying, managing or cultivating any lands within or in the vicinity of the mahal to which their inquiries may extend, or gathering or disposing of the produce thereof, or collecting, enjoying or appropriating any rent or revenue derived therefrom, as well as the gumash-tas or other agents employed by such persons in the management or cultivation of the land, or in the collection of the rent, produce or revenue thereof, to attend and produce all accounts or other papers which they may respectively possess relative to such lands, produce, rent or revenue, and to examine the said person on oath or halaf-nama to the truth of the accounts produced, or on any other matter relating to such accounts, or regarding the lands, produce, rent or revenue of the mahal or the rights and interests attaching to such lands, produce, rent or revenue:

provided, however, that no person shall be compelled to answer on oath or solemn declaration any interrogation regarding matters wherein he may have an immediate personal interest in concealing the truth, or in uttering what is false, not being an interest arising out of fear,

favour or reward, or any corrupt bargain or agreement with another party.

Second.—The rules contained in section 11, Regulation II, 1819, relative to the mode of serving process on persons who may be required to attend and produce accounts under the provisions of that Regulation, shall be and be held applicable to processes issued by Collectors or other officers under the rules contained in this Regulation.

In like manner, the provisions of section 12 of the said Regulation shall be applicable to all patwaris, gumashtas or other persons by whom the accounts of any lands, regarding which the said inquiries may have been instituted may be kept, and who, after being duly summoned as aforesaid, may neglect or omit to produce any of the accounts required from them, or to give their evidence regarding them, or who may deliberately give a false deposition on oath or solemn declaration, when summoned and examined as aforesaid, or who may alter, fabricate, falsify or mutilate the accounts which they may be required to produce :

provided further, that Collectors and other officers employed in the settlement of the land-revenue, or in any of the inquiries specified in this Regulation, shall be vested with all the powers and authority which are or may be lawfully exercised by Collectors in cases depending before them

under Regulation II, 1819 ; and the rules contained in clause third, sections 13, 14 and 19 of the said Regulation shall be and be held applicable to all persons who may be summoned by any Collector or other officer aforesaid, or who may resist the process of a Collector issued under the rules of this Regulation, or who may refuse to take an oath or subscribe a solemn declaration when required, or who may deliberately give a false deposition on oath or under a solemn declaration taken instead of an oath, or may cause or procure another to do so.

See Act XX of 1848, *supra*.

20. *First.*—The powers specified in sections 11, 12, 14, 16, 17, 18 and 19 of this Regulation shall be ordinarily exercised by Collectors when employed in making or revising settlements of the land-revenue, and shall extend to all the lands comprised in the pargana in which he may be so employed; but it shall be competent to the Government, by an order in Council to be publicly proclaimed in the district, to restrict the authority of Collectors and other officers making settlements in such manner and to such extent as he may from time to time judge expedient.

In like manner it shall be competent to Government to vest such Collectors as may from time to time be judged fit with a special authority to receive, try and determine in the first instance, subject to a regular suit in the Adalat as above provided, all or any of the questions of the nature specified in the aforesaid sections, though the said Collectors may not be engaged in making or revising a settlement of the land-revenue, and to vest in such of the Collectors as may be thought proper authority (either generally or within such limits as may be from time to time determined) to receive, try and determine by summary process all suits for rent which may be preferred by zamindars, taluqdars or other *sadr malguzars* or farmers of land, or by any person in their behalf, against any dependent taluqdar, zamindar, under-renter, raiyat or other under-tenant of whatever denomination, as well as all applications by raiyats and the under-tenants contesting the demand of a *sadr malguzar* or farmer;

and all complaints preferred by raiyats or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt or payment of the rent of land, whether *malguzari*

or lakhiraj, or with the rent of orchards, pasture-grounds and fisheries, commonly denominated phalkar, bankar and jalkar, or with any other asset of the land-revenue not included in the sair abolished, together with all complaints of the non-delivery of pattas when demandable under the Regulations, or complaints of the prescribed receipts not being given for actual payment of rent, and generally, complaints of any deviation from the Regulations, or from the established usage of the country, relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land, between landholders or farmers of land and their under-tenants of whatever denomination.

Sec s. 1, Act X of 1859 ; and also Reg. IX of 1833, s. 3.

Second.—The appointment of the Collector to the discharge of the above duties, and the extent of the jurisdiction to be assigned to him, shall be notified by proclamation in the district, after such manner as the Governor General in Council may direct ; and after the publication of such notice, all summary suits, actions, applications and complaints of the above nature, and referring to lands or the rents, produce or accessions of land lying within the jurisdiction assigned to the Collector as above, which may be preferred in the Zilla Adalat by any sadr malguzar, zamindar, taluqdar, farmer, raiyat or other proprietor or under-tenant of land, shall, immediately on being received, be referred for trial to the Collector, to whom also all such summary suits depending at the time shall be transferred ;

provided also, that in such cases, parties having suits or complaints to prefer, of which the cognizance may be vested as above in the Collector, shall be at liberty to prefer them to that officer in the first instance.

It shall in like manner be competent to the Governor General to fix, by an order in Council, the period at which the special powers given as above to a Collector, and the authority to be ordinarily exercised by those officers on the occasion of making settlements, shall cease and determine.

Settlement.

Third.—No complaint or application of the nature specified in the preceding clauses shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.

21. In summary suits for rents and the like, wherein special rules have been prescribed for regulating the process of the Courts, the Collectors shall be guided by the same rules, and shall exercise the same powers and authority, as are or may be lawfully exercised by the Zilla and City Judges.

In other cases falling under their cognizance according to the provisions of this Regulation, the ordinary process for securing the attendance of the defendant or party otherwise impleaded shall be to issue a notice reciting the matter, and requiring the defendant or other party to attend in person, or by representative, at such time and place as may be made choice of by the Collector for conducting the investigation ;

should any party fail to attend after being served with a notice of the above description, or should the return of the nazir or person employed to serve the notice be, that after diligent search the party or parties cannot be found, proclamation shall be made in writing, to be stuck up at or near the ordinary residence of the party, stating that, after fifteen days from the date of publishing the same, the case will be liable to be brought up for trial and judgment ; and any party implicated, who, having been served with the notice above described, shall fail to attend, or who shall continue to absent himself, will be as much bound by the judgment that may be passed, as if he or they had been in attendance to plead.*

22. [*Repealed by Act No. X of 1859.*]

23. *First.*—It is hereby declared and enacted, that, in so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts and all other similar matters connected

Collector's kachahri
held a Civil Court.

* See Reg. VIII of 1831.

with cases under cognizance before the Collectors of land-revenue or other officer, by virtue of the powers vested in them by this Regulation or any other Regulation whereby Collectors are vested with judicial powers, their kachahri or office for the time being shall be deemed and held to be a Court of Civil Judicature.

Second.—Provided also, that the regular suits which may be brought to contest decisions passed by Collectors, under the powers vested in them by sections 11, 12, 14 15, 16, 17, 18, 19 and 20, shall be of the nature of an appeal to Court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action.

Third.—Collectors of the land-revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded; the Collector decreeing the same shall proceed to levy the amount for the party in whose favour it may be adjudged, by the process in use for the recovery of arrears of the Government revenue;

provided, however, that he shall not sell any lands, houses or other real property in satisfaction of any judgment passed in favour of any individual on a summary inquiry.*

In cases wherein possession of lands, houses, watercourses or the like may be adjudged, it may and shall be lawful for the Collector making the award to deliver over possession in the same manner and with the same powers in regard to all contempts, resistance and the like, as are or may be lawfully exercised by the Courts in giving possession to an auction-purchaser; and the Zilla Adalats shall support the Collectors in the exercise of the above power, and shall give effect to any orders passed by them in pursuance of it, in the like manner as if the same had been passed by themselves.

* Act No. VIII of 1835 repeals so much of this clause as prohibits the Collectors from selling *land* in satisfaction of summary awards for arrears of rent which may have accrued thereon.

Collectors are further hereby empowered to place one or more peons, mirdahas, sawars or the like, to aid in the maintenance of possession for the party to whom it may be awarded, in case of his deeming such a measure necessary or expedient.

24. *First.*—It shall and may be lawful for a Collector or other officer exercising the powers of Collector, preparatory to making or revising a settlement as aforesaid, to depute any tahsildar, kanungo, amin or other fixed or temporary officer, to any village or mahal, whether the same be managed by a zamindar or farmer or be held khas, to inquire into the various matters which such Collector or other officer is required or empowered to investigate, in order to form a settlement in the mode prescribed by this Regulation.

Any such Native officer so deputed as above shall be deemed to be vested with the power of summoning and examining patwaris, gumashtas or other persons by whom the accounts of the village or mahal may be kept, in the same manner and with the same powers as is provided for officers deputed under section 25, Regulation XII, 1817.

Furthermore, in case the Collector or other officer may so prescribe, the said tahsildar or other person shall be empowered to make a measurement of the village or mahal into which they may be deputed, and to summon any mukaddams, pradhans, raiyats or other residents, and to call upon them to point out the boundaries of such village or mahal, and to furnish information as to all matters relating to the land and the rights and interest attaching thereto; and any person contumaciously withholding information from an officer deputed as aforesaid shall be liable, on the same being established to the Collector's satisfaction, to the same penalty as is prescribed for patwaris refusing to attend or give evidence.

Second.—Provided also, that any person who may by force or threats obstruct or resist the execution of any legal process, requisition or order of a Collector or other Revenue-officer shall, in addition to the penalties prescribed by the existing Regula-

Punishment of resistance or obstruction of process or order of Collector.

tions for such act, be liable to a fine not exceeding two hundred rupees, or to imprisonment in the Diwani jail for a period not exceeding two months; the said fine or other penalty to be adjudged by the Collector after proceedings duly held and recorded, and the sentence to be immediately reported to the Board to which he may be subject.

Third.—Provided further, that all Police-officers shall aid and support the execution of all

Police-officers to aid execution of process and orders of Collector.

process and orders issued by a Collector or other officer aforesaid, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace shall occur in consequence of any resistance or obstruction being made, or attempted to be made, to the legal process or order of a Collector or other Revenue-officer, the parties resisting or obstructing such process or order shall be punishable for the affray or breach of the peace, and the Revenue-officers shall not be liable to any criminal prosecution on that account.

25. [*Repealed by Act No. XX of 1865.*]

26. No other pleadings shall be required from the parties

Pleadings required. in such suits than a plaint and answer; provided, that if the parties should at

any time wish to file an amended plaint or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.

27. [*Repealed by Act No. XII of 1876.*]

28. It shall be competent to the Collectors to hear and

Collectors may try and determine suits in any part of their districts.

determine such suits in whatever part of the district they may occasionally be or reside; provided that every hearing and decision be in public kachahri or in some other place open to the public, and in the presence of the parties or of their constituted agents or vakils, if in attendance.

29. *First.*—The decisions of the Collectors on all such suits shall be appealable to the Board

Appeal to Board.

of Revenue or other Authority exercising the powers of that Board.

The petition of appeal shall be presented either to the Collector or to the Board, at the option of the party; but no petition of appeal shall be received after the

expiration of three months from the date of the decision, unless sufficient cause shall be shown for the delay to the satisfaction of the Board ;

provided also, that the Board shall not be required in ordinary cases to go into a regular investigation of the merits, but shall be authorized to dismiss the appeal

Procedure on such appeal.

without further investigation, in all cases in which, on a consideration of the final rubakari of the Collector, they may not see ground to consider the decision of that officer to be unjust, erroneous or doubtful, or his proceedings in the case irregular or imperfect ;

provided also, that in all cases in which the Collector may dismiss the suit for non-attendance, or

When Board may direct new trial or interpose to correct neglect or delay.

on some other ground of default, without an investigation of the merits of the case, it shall be competent to the

Board to direct a new trial, and in cases in which he may neglect or delay the investigation or decision of a suit without sufficient cause, it shall be competent to the Board to interfere, and to cause the Collector to proceed upon the inquiry into and determination of it.

Second.—No pleadings, except the petition of appeal,

Pleadings required shall be required in such appeals, nor in appeals to Board.

shall any fees be taken by the Board on the exhibits originally filed, or on any further documents which the Board may think it necessary to call for.

Third.—If the parties choose to employ in the pleading

No mukhtárnáma required for same agents re-employed.

of such appeals the same agents or vakils who were previously employed by them in the original suit, no further mukhtarnama or vakalatnama shall be required of them.

Fourth.—The respondent shall receive notice of the

Respondent to receive notice, but not required to appear.

appeal, but shall not be compelled to appear in person or by vakil; and the appeal shall be decided on the merits of the case, notwithstanding his absence, in the same manner as if he had attended.

Fifth.—The decision of the Board shall be final in as

Board's decision how far final.

far as concerns the result of the summary inquiry of the Collector.

Sixth.—Any person, however, dissatisfied with the summary judgment of the Collector or the Board, and desirous of a more full and formal decision, shall be at liberty to prefer a regular suit to try the merits of the case in the zilla or other similar or superior Court in which it may be cognizable.

In such cases the summary judgment of the Collector, if not reversed or stayed by the Board, shall be carried into effect notwithstanding the institution of the regular suit.

As to period for presenting appeals under this section, see Act III of 1868 (B. C.)

A person may sue in the Civil Court to enforce his right to participate in a settlement.—8 B. L. R., 521.

30. All persons having claims or complaints to prefer of the nature of those made cognizable by Collectors under the provisions of this Regulation, and not wishing to avail themselves of the summary process authorized in that Court, shall be at liberty to institute their claims or complaints, in the first instance, by a regular suit before the local Munsif, or in the Zilla Adalat, according as the suit may be cognizable in these Courts respectively.

31. *First.*—Whenever a regular suit may be instituted in a Civil Court, with a view to set aside or alter a summary judgment passed by a Collector, the proceedings held on the summary inquiry shall be called for by precept from the Court, and filed on the record of the case.

Second.—Provided also, that no such suit shall be cognizable by, or referable to,* Munsiff; and all Munsiffs shall, in cases tried by them, be held and bound by the decisions passed, and records prepared, by Collectors or other Revenue-officers under the provisions of this Regulation, unless the same shall have been rescinded or altered

* The words "any register, Sadr Amin or" are repealed by Act No. XVI of 1874.

by the Board, or by the zilla or other similar or superior Court, on a regular suit.

So much of this clause as provides that suits shall not be cognizable by Munsiffs is repealed by Act XXV of 1837, s. 2.

32. The Collectors shall transmit to the Boards such periodical reports of the causes decided by, or depending before, them as the Boards may direct, and the Boards will also furnish to Government such abstracts of those reports, and such reports in the cases received and determined by them in appeal, as the Governor General in Council shall from time to time require.

33. *First.*—It shall be competent to Collectors or other officers exercising the powers of Collectors to refer certain cases to arbitration any disputes cognizable by them under the provisions of this Regulation, as well as any questions or disputes of any kind respecting land or the tenures therein, or the rights dependent thereon, that may come before them, provided the parties consent to that mode of adjustment, and on award being made, to cause the same to be executed.

In referring cases to arbitration under the above provision, and in their general proceedings relative to such suits, the Collector shall be competent to vest in the arbitrators the same powers and authority in regard to the summoning and examination of witnesses, and the administration of oaths, and to enforce the orders passed by the arbitrators under such powers, in the same manner as the Courts of Judicature are empowered to do; and all awards made on such references shall, when confirmed by the Collector, have

the same force and validity as a regular decree of the Adalat, and shall not be liable to be reversed or altered, unless the award shall be open to impeachment on the ground of corruption or gross partiality, or shall extend beyond the authority given by the submission of the parties; and such ground of impeachment shall be established in a regular suit in the zilla, city or other superior Court wherein the case may be cognizable.

Second.—In referring any dispute to arbitration the Collector shall be careful to specify in his proceedings, and in the deed of arbitration to be executed by the parties, the precise matter submitted to the arbitrators; and if the award first made by the arbitrators shall not include all the points submitted to them, or shall be otherwise incomplete, it shall be competent to the Collector again to refer the matter to them, with directions to perfect their award.

Third.—The pargana kanungos and tahsildars may be appointed arbitrators in any case referred to arbitration under the above rules, anything in the existing Regulations notwithstanding.

For additional rules respecting arbitration, see Reg. IX of 1833, ss. 5—10.

First.—When a Collector or other officer exercising any of the powers vested in the Collectors by the rules of this Regulation relative to complaints of dispossession or disturbance of the possession of lands or premises, shall learn, either by a reference from the Magistrate, or by a report from any other public officer or otherwise, that any disputes exist within the tract placed under his jurisdiction, relative to any lands, premises, crops, orchards, pasture grounds, fisheries, wells, watercourses, tanks, reservoirs or the like, likely to terminate in a breach of the peace, it shall and may be lawful for the Collector or other officer aforesaid to require the contending parties to attend in person or by representative at a stated time and place, and after investigating the case in the presence of the parties or their representatives, or such of them as may attend, or referring it to arbitration as above prescribed, to decide the case in the same manner as if it had been brought before him by the complaint of one of the parties;

provided also, that if the fact of previous lawful possession cannot be ascertained, it shall be competent to the Collector, subject to, the orders and direction of the Board to decide on the question of right, and

And to give possession to one of contending parties.

to give possession to one of the contending parties, leaving the other party to contest the decision by a regular suit in Court; but no such decision shall be passed by any Collector until he shall have instituted a careful inquiry into the fact of possession, and the Board shall be careful to see that this restriction is observed ;

provided further, that in such cases it shall be competent to the Collector to attach the disputed lands, premises, &c., as aforesaid, and to appoint an officer to the management of the same, retaining in deposit the rents and produce or such portion thereof as may remain after discharging any public revenue demanded therefrom, with the charges of management, until one of the contending parties shall be placed in possession.

Second.—Whenever any Magistrates or Joint Magistrates shall have before them any suit, complaint or information relative to any dispute regarding lands, premises, crops, watercourses or the like, which may appear likely to terminate in a breach of the peace, or which it may otherwise be desirable to bring to an immediate decision, it shall be the duty of such Magistrate or Joint Magistrate, in cases in which the Collector shall be vested with the cognizance of such actions, to certify the case to that officer, and the Collector will then forthwith proceed to investigate and determine the case under the rules above prescribed :

provided also, that in all cases of forcible dispossession or forcible disturbance of possession, the Collector shall invariably transmit to the Magistrate or Joint Magistrate a copy of the first proceeding held by him in the case, and also a copy of the rubakari containing his final award.

See Regulation IV of 1828, section 2, clause 4.

Third.—The Collector shall in all such cases use every proper means for inducing the parties to refer their disputes to arbitration, in like manner as the Diwani Courts are directed to do.

35. Whenever the term “Board of Revenue,” or “Board of Commissioners” may occur in this or any other Regulation, the same shall be held and considered to apply to

Collector may attach
disputed lands, &c.

Reference of disputes
by Magistrates to Col-
lector.

Collector to encourage
arbitration.

“Board of Revenue.”
“Board of Commission-
ers.”

any Board, committee or commission, and to any member of such Board, committee or commission, that may be vested by the Governor General in Council with the powers and authority of the Board of Revenue, save and except in so far as may be otherwise specially declared and provided

In like manner, all rules in this or any other Regulation whereby any duties or powers may be prescribed for, or vested in, Collectors, shall be held and considered to be equally applicable to any officer exercising the authority of Collector under the orders or with the sanction of the Governor General in Council.

Rules regarding Collectors to apply to officer exercising authority of Collector.

REGULATION IX OF 1825.

*A Regulation for extending the operation of Regulation VII, 1822 ; for authorizing the Revenue-authorities to let in farm estates under temporary leases, on the default of the malguzars, or to hold the same khas for a term of years ; for modifying and adding to the rules contained in Regulation II, 1819 ; and for making certain other amendments in the existing Regulations.**

1. WHEREAS the provisions of Regulation VII, 1822, are in force only within the Ceded and Conquered Provinces, in the district of Katak, and in the pargana of Pataspur and its dependencies ;

and whereas there are within the other Provinces belonging to this Presidency various mahals and tracts for which a permanent settlement has not yet been concluded, and it appears to be advisable that the Revenue-authorities should be vested, in regard to such mahals and tracts, with the same powers as belong to the like officers within the Ceded and Conquered Provinces ;

and whereas the principle of the rules contained in the said Regulation, relative to lands held free of assessment,

* Declared to apply to the whole of the Lower Provinces except the Scheduled District, Act No. XV of 1874.

or at a mukarrari jama under special grants, is equally applicable to such tenures in all parts of the country ; and it appears to be likewise expedient to make provision for the occasional exercise, by the Revenue-officers in the Lower Provinces, of the powers specified in the said Regulation, for the summary trial of certain suits between individuals, subject as therein provided to an appeal to the Adalat by a regular suit ;

and whereas a frequent recourse to the sale of lands for the recovery of arrears of revenue in districts of which the assessment has not been fixed in perpetuity being inexpedient, it appears to be necessary and proper that the Revenue-authorities should be empowered to let in farm for a term of years the estates of defaulters under temporary leases, or to hold the same khas for the purpose of making a raiyatwar settlement, where that measure may be deemed advisable ;

and whereas it has appeared to be expedient to modify and to add to the provisions contained in Regulation II, 1819 ;

and whereas the rules prohibiting the collection of sair duties, and the provision contained in section 39, Regulation IX, 1810,* having been considered applicable to several items of siwai collections or cesses levied by the malguzars and others for local purposes, and according to ancient usage, which it would be injurious to abolish, it appears to be expedient to provide for the continuance of such collections when sanctioned by Government, the following rules have been enacted, to be in force, from the date of their promulgation, within the Provinces belonging to the Presidency of Fort William.

2. *First.* — The provisions contained in clause sixth, section 2, and in the thirty-three following sections of Regulation VII, 1822, are hereby extended to all lands (including jagirs, mukarraris and other tenures held free of assessment or at a quit-rent under special grant) not included within the limits of estates for which a permanent settlement has been concluded in the manner prescribed by

Provisions of Regulation VII, 1822, extended to lands not within limits of permanently settled estates.

* Repealed by Act No. VI of 1863.

Regulation VIII, 1793, and Regulations II* and XXII† 1795, as far as the same may be applicable.

Second.—The said provisions shall likewise be in force in all estates which may now or hereafter be held khas, during the period for which they may be so managed.

To be in force in estates held khas.

Third.—The provisions aforesaid shall also apply to the Sundarbans, the hill lands of Bhagalpur, and other extensive forests and wastes not included within the limits of parganas, mauzas or other revenue-divisions specified at the time of settlement as belonging to the mahals then assessed; as well as to all estates bordering on such forests or wastes.

And applicable to Sundarbans, &c.

3. It shall be competent to the Governor General in Council to vest any Collector or other officer exercising the powers of Collector, within the Provinces of Bengal, Bihar, Orissa and Benares, with the several powers specified in section 20, Regulation VII, 1822, in the manner specified in the second clause of that section, within such local limits as may, from time to time, appear to be advisable; and the several provisions contained in section 21 and the fourteen following sections shall apply to the several parganas or other local divisions so placed under the jurisdiction of the Collector or other officer aforesaid.

Power to vest Collector. &c., with powers specified in section 20. Regulation VII of 1822.

4. Whenever an arrear of revenue shall accrue on account of any mahal for which an engagement may have been taken by the proprietors or persons recorded as proprietors, not being an estate of which the assessment has been fixed in perpetuity, and the malguzars shall fail to discharge the same within one month of the date on which it became due, then, if there shall appear to be any objection to the sale of the estate, and the arrears cannot otherwise be recovered (on which points the decision of the Revenue-authorities is to be held conclusive), it shall be competent

Procedure when arrear of revenue on account of mahals not permanently assessed is not paid within one month after due date, and objections appear to public sale.

* Repealed by Act No. XIX of 1873. † Repealed by Act No. VIII of 1868.

to the Collector or other officer exercising the powers of Collector, with the sanction of the Board, and subject to the orders of Government, to annul the existing engagements with the malguzars, and to let the mahal in farm for such period, not exceeding fifteen years, as the Governor General in Council may appoint, or to hold the mahal under khas management for a like period.

In such cases, if the mahal shall yield a higher jama than that for which the malguzars may have engaged, the excess shall in the first place be appropriated to the liquidation of the arrear due on account of it, or such portion thereof as the farmer may not have separately agreed to discharge or as may not otherwise have been recovered, and, out of any surplus remaining, the malguzars shall receive such malikana, not being less than five per cent., nor more than ten per cent. on the assessment of the last year of their engagement, as the Governor General in Council may direct.

5.* *First*.—The following rules are enacted in modification of sections 5, 6, 8, 10, 11, 13, 15, 22 and 30 of Regulation II, 1819.

Modification of Regulation II, 1819.

Second.—Whenever a Collector or other officer exercising the powers of Collector shall visit, or be about to visit, any mahal for the purpose of making a settlement in the manner prescribed in Regulation VII, 1822, it shall be competent to him, by a notification to be stuck up in some conspicuous place within such mahal, and each village thereof, if consisting of several villages, to require all persons holding lands free of assessment or at a fixed jama, within or adjoining to the village or villages in which the lands of such mahal or any part thereof may be situate, to appear before him either in person or by wakil within a reasonable time, not being less than one month from the date of such notification, at such place within the mahal as he may select for holding his office, and to attend him from day to day while he may continue within the mahal, with all sanads or other writing in virtue of which they may

Collector making settlement to issue notification and require appearance of persons holding lands free of assessment.

possess the lands, or under which the lands may have been, or may be claimed to be, held free of assessment or at a fixed jama, together with any evidence they may desire to have taken in support of their claims.

Third.—It shall likewise be competent to Collectors and other officers aforesaid, when engaged in the settlement of any mahal under the rules of the Regulation above-mentioned or preparatory thereto, to measure, or cause to be measured, without a previous reference to the Board of Revenue, all lands, whether malguzari or lakhiraj, belonging or adjoining to the village or villages in which such mahal or any part thereof may be situated.

Fourth. — When the Collector or other officer aforesaid shall have commenced the settlement of any mahal in regard to which he may have issued a notification as aforesaid, and shall purpose to hear the claims of persons holding lands free of assessment or at a fixed jama, and to receive their sanads and other writings as aforesaid or any of them, the period fixed in the notification for the attendance of such parties being arrived, he shall, on the day preceding that on which he may intend to hold proceedings in the said cases or any of them, notify such intention by an ishtar stuck up in his office and in some place open to the public within the mahal.

Fifth.—If any person holding land free of assessment or at a fixed jama as aforesaid shall fail to attend either in person or by wakil, after notice being given in the manner above prescribed, the Collector shall be competent to proceed *ex parte* to investigate the title of such party to hold the land in his possession free of assessment, and with the sanction of the Board of Revenue to resume the said lands, if they appear to be held on an invalid title.

Nor shall any person defaulting as above, or neglecting to appear and give answer when required to do so, in the manner prescribed in Regulation II, 1819, be entitled to stay the resumption and assessment of his lands under the provisions contained in section 22 of that Regulation.

Provided further, that the rule contained in clause second, section 13, Regulation II, 1819, shall be and be held applicable to such persons, as well as to persons who may appear when summoned under the provisions of that Regulation, or in the manner hereinbefore provided.

Sixth.—It shall be competent to Collectors and other officers making settlements as aforesaid, either to complete the investigation of the claims of persons holding land free of assessment or at a fixed jama, under the rules of the fifteenth and following sections of Regulation II, 1819, with the modifications hereinafter provided, during the progress of the settlement, or to limit their proceedings to the ascertainment of the land actually held under such tenures and the record of the title-deeds produced by the parties, postponing the further investigation of the case to a future period.

When any Collector or other officer may postpone the investigation of any case as aforesaid, he shall at the same time notify to the party the time and place at which the further investigation is to be held, or, if circumstances prevent him from doing so, he shall, before resuming the inquiry, give the party one month's notice to attend, and on the failure of any party to attend when so warned the Collector or other officer aforesaid shall be competent to proceed to try the case *ex parte*, and, with the sanction of the Board, to resume and assess the lands.

Seventh.—Collectors or other officers who may proceed to investigate claims to lakhiraj lands during the progress of a settlement, shall follow the rules of the fifteenth and following sections of Regulation II, 1819, in all cases wherein the parties may attend and deny the liability of their lands to assessment, subject to the modifications hereinafter provided.

Eighth.—No lands shall be resumed by a Collector, even though the parties may confess that they are liable to assessment, without the sanction of the Board of Revenue, save and except as hereinafter provided; but on such confes-

Collector may either complete investigation of claims or limit proceedings to certain points.

What provisions to regulate investigation of claims to lakhiraj lands.

Bar to resumption of lands without sanction.

Procedure by Board.

sion duly attested, which will of course supersede the necessity of any further inquiry, it shall be competent to the Board forthwith to direct the lands to be assessed, unless the same be held by village or zamindari servants in lieu of wages, which shall not be resumed without the sanction of Government.

Provided also, that in all cases wherein it may appear to the Board that the resumption of lands held free of assessment would occasion serious distress to the holders, it shall be their duty to submit a report of the circumstances to the Governor General in Council.

*Ninth.**—The provisions of clause first, section 23, section 25 and section 28, Regulation VII, 1822, shall be applicable to cases investigated by Collectors, under the rules of Regulation II, 1819, or under the provisions of this Regulation.

Regulations applied to investigations by Collectors.

Tenth.—It shall not be necessary to use stamped paper for the proceedings held or exhibits filed before the Revenue-authorities in cases originating with a Collector or other officer of Government claiming to assess land held free of assessment; but the said Authorities are authorized in the said cases, as in all other cases wherein they may exercise judicial powers under the provisions of the existing Regulations, to award to witnesses their reasonable charges, and to levy the same, as well as all costs adjudged by them, by the process in force for the recovery of arrears of the Government revenue.

Stamped paper not necessary.

Award of charges to

Eleventh.—Persons claiming to hold lands exempt from revenue shall, with their petitions of plaint, deliver to the Collector or other officer to whom the same may be preferred all sanads and other writings on which their claim may be founded; and shall insert in the said petition a full specification of the several particulars required

Procedure for persons claiming to hold lands revenue-free.

* So much of this clause as provides that section 25 of Regulation VII of 1822, shall be applicable to cases investigated by Collectors under the rules of Regulation II of 1819, or under this Regulation, is repealed as to the Lower Provinces by Act No. XX of 1865.

Settlement.

to be registered by the rules in force relative to the registry of rent-free tenures, and of the grounds on which their claim is founded.

If the claim shall involve only the interests of Government, the Collector shall proceed without delay to investigate the case, giving, however, eight days' previous notice to the party of the day on which he may propose to bring it to a hearing in the mode prescribed for the Civil Courts.

If the claim shall be against any individual singly or jointly with Government, the Collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by vakil duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim; and on the appearance of such defendant, the Collector, after allowing him to inspect and examine the claimant's petition of plaint, and the writings therein referred to, shall call upon him to deliver, within the period of seven days, a statement of the objections he may desire to urge against the claim.

In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall and may be lawful for Collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim.

Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received: giving, however, as aforesaid, eight days' previous notice to the parties of the day on which he may propose to bring it to a hearing.

Provided that, in case wherein the parties concerned or their authorized representatives shall desire or consent (the same being signified in a written petition or ikrarnama to be filed with the proceedings) to have an immediate decision, whether the case shall originate in a claim on behalf of Government, or in the suit of an individual, and whether the proceedings of the Collector shall be held under the provisions of Regulation II, 1819, or under those of this or any other Regulation touching the

matter, it shall be competent to the Collector to proceed forthwith to the investigation and decision of the case, without issuing any formal summons or notice.

Twelfth.—Whenever a Collector or other officer exercising the powers of Collector shall be of opinion that any tract of land belongs to Government, and that no individual has *bonâ fide* possession thereof, it shall be competent to him, by a notification to be stuck up in his kachahri, in the Zilla Court, and in the kachahri of the kanungo, munsif or thanadar to whose jurisdiction the land in question may belong or adjoin, to require all claimants to the same to appear before him within a reasonable time, to be fixed by the Board of Revenue, not being less than six weeks from the date of such notification; and, on the appearance of such claimants, to proceed to investigate their claims in the manner prescribed by Regulation II, 1819, for investigations relative to the liability of lands to be assessed as herein modified.

Provided further, that if the Collector or other officer aforesaid shall decide that none of the claimants have *bonâ fide* possession of the lands in question, and his decision shall be affirmed by the Board of Revenue, the said lands shall be at the disposal of Government until the same shall be adjudged to be private property by a decree of Court on a regular suit.

Provided also, that all such suits, if preferred by one of the claimants before the Collector, shall be dismissed with costs, unless instituted within six weeks of the date on which the Board may affirm the decision of that officer, and that the rule contained in clause second, section 13, Regulation II, 1819, shall be strictly applied to such suits: nor shall any such suit be admitted on the part of any person who may not have appeared before the Collector pursuant to notice, unless he shall be able to show good and sufficient cause for his non-appearance and shall apply for permission to sue within six weeks of his being informed of the Board's decision: provided further, that if the party shall not prosecute his suit within six weeks of being permitted to sue, the suit shall be dismissed with costs.

6. It shall be competent to the Governor General in Council, by an order in Council, to vest any

Power to vest Collector, deputed to hold local inquiry within mahal, with same powers in regard to lands held free of assessment in villages adjoining mahal.

Collector or other officer who may be deputed to hold a local inquiry within the limits of any mahal with the same powers and authority in regard to all lands held free of assessment within or adjoining to the village or villages

in which the lands of such mahal or any part thereof may be situated; and for the investigation of all claims touching such lands as by the foregoing provisions are vested in Collectors making settlements in the manner prescribed by Regulation VII, 1822; and also from time to time to depute Collectors or other officers aforesaid, for the purpose of ascertaining, recording or investigating the said claims in the manner above prescribed.

7. The particulars of all lands held free of assessment

Lands held free of assessment to be specified in proceedings.

within all villages and mahals of which the settlement may be made under the provisions of Regulation VII, 1822,

shall be fully recorded in the proceedings of the Collector or other officer making the settlement.

8. Nothing contained in Regulation II, 1819, or in any

Saving of certain Regulations.

other Regulation in force, shall affect or be considered to affect the provisions

contained in section 10, Regulation XIX 1793, section 11, Regulation XXXI, 1803,* and in the corresponding enactments applicable to Benares and the Conquered Provinces, relative to grants illegally made subsequently to the dates specified in the said rules respectively: and in all cases in which it shall be established to the satisfaction of the Revenue-authorities that any lands now held free of assessment were subject to the payment of the revenue at the dates aforesaid or subsequently thereto, and that they have not been thereafter exempted from the payment of revenue under the authority of the Governor General in Council, nor adjudged to be exempted from payment of revenue under a regular decree of Court, it shall and may be lawful for the said Authorities forthwith to resume and assess the said lands; save and except in cases wherein the revenue

* Repealed by Act No. XIX of 1873.

of the same may belong to a zamindar, taluqdar or other malguzar with whom a permanent settlement has been concluded; nor shall the provisions of section 22, Regulation II, 1819, apply to such cases.

9. It is hereby declared and enacted that the rules

Rules relative to the abolition of the sair duties. &c., applicable to what cesses. relative to the abolition of sair duties and the provision contained in section 39, Regulation IX, 1810,* are not and shall not be held to be applicable

to any item of siwai collections or cess levied by malguzars and others according to ancient custom, which has been or shall be sanctioned by Collector or other superior Revenue-authority, not being a tax on the transport, export or import of goods or merchandize, or other tax or duty specifically prohibited: but after the settlement of any village or mahal shall have been made in the manner specified in section 9, Regulation VII, 1822, the rules and provisions aforesaid shall be applicable to all cesses and collections not sanctioned in the manner specified in that section.

REGULATION IV OF 1828. •

A Regulation to declare and extend the powers to be exercised by Collectors, when making or revising settlements under the provisions of Regulation VII, 1822.†

1. WHEREAS it appears to be expedient that the powers specified in section 16, Regulation VII, 1822, should be generally vested

Preamble. in Collectors and other officers performing the duties of Collectors, when employed in making or revising settlements according to the provisions of that law, and that the jurisdiction of the said officers in such cases should not be barred by summary decisions passed by Magistrates, or Joint Magistrates, the following rules have been enacted, to be in force from the date of their promulgation throughout the Provinces subject to the Presidency of Fort William.

2. *First, second, third. [Repealed by Regulation IX of 1833, section 4.]*

* Repealed by Act No. VI of 1863.

† Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1874.

Fourth.—To prevent doubts as to the period for which Collectors and other officers aforesaid are to possess the powers vested in them by this Regulation and by Regulation VII, 1822, in regard to any mahals of which the settlement may have been, or may be about to be made, or revised, it is hereby declared and enacted that they shall be held and considered to be engaged in making and revising such settlement from the date on which they have issued or may issue orders for adjusting the boundaries, for measuring any of the lands or for making a census of the inhabitants of any village or portion of a village belonging to such mahal, of which intimation shall be given to the Magistrate or Joint Magistrate within whose division the village shall be situated, up to the day on which they may be informed that the settlement, as made and revised by them, has been finally confirmed by Government.

During the aforesaid period Magistrates and Joint Magistrates shall be guided, in respect to such mahals, by the provisions of clause second, section 34, Regulation VII, 1822, by which they were required to refer to the Revenue-authorities disputes regarding lands, premises, crops, water-courses and the like.

And all Police-officers are required to give immediate and efficient support to Collectors and other Revenue-officers in the execution of their duties.

REGULATION IX OF 1833.

*A Regulation to modify certain portions of Regulation VII of 1822 and Regulation IV of 1828; to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of revenue employed in making settlements under the above Regulations; for enforcing the production of the village-accounts; for the more extensive employment of Native agency in Revenue Department; and to declare the intent of sec. 5, Regulation VII of 1822, touching claims to malikana.**

1. EXPERIENCE having demonstrated the expediency of
Preamble. modifying certain enactments of Regu-

* See Act No. XIII of 1848.

tion VII of 1822, and Regulation IV of 1828, also of providing a more speedy and satisfactory mode of deciding such judicial questions as may be cognizable by officers of the Revenue Department under those Regulations, and of declaring the intent of the rules regarding malikana promulgated by section 5, Regulation VII of 1822; it having been found expedient likewise that measures should be adopted for enforcing the production of the village-accounts, and for rendering them accessible to all persons concerned having occasion to examine them; also, that Natives of respectability should be employed in more important trusts connected with the revenue-administration; the following provisions have been enacted, to be in force from the date of their promulgation.

2. So much of Regulation VII of 1822 as prescribes, or has been understood to prescribe that the amount of jama to be demanded from any mahal shall be calculated on an ascertainment of the quantity and value of actual produce, or on a comparison between the costs of production and value of produce, is hereby rescinded.

3. So much of the above Regulation as prescribes, or has been understood to prescribe, that the judicial investigation into and decision on questions of disputed private claims shall be conducted simultaneously with the ascertainment of and determination on the amount of the Government demand, is hereby rescinded.

The Governor General in Council will hereafter determine the order in which the above matters shall be respectively disposed of.

4. [*Repealed by Act No. XVI of 1874.*]

5. In addition to section 33, Regulation VII of 1822, it is hereby enacted that whenever any judicial question may be depending before a Collector or other officer employed in making settlements under the provisions of Regulation VII of 1822, in which the interests of justice may, in the opinion of such officer, require that the

Repeal of provisions of Regulation VII, 1822, as to mode of determining jama to be demanded from mahal.

Repeal of provisions as to investigation of claims simultaneously with determination of Government demand.

When Collector making settlements considers arbitration necessary, he may fix period for production of award.

case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior Revenue-authorities, a period within which the parties must produce the award.

6. In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector or other officer to summon a panchayat, to be composed of three or five impartial and otherwise competent persons of good repute for the trial of the matter at issue.

7. After duly considering the statements and evidence offered by the parties, or, in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the panchayat shall declare their opinions, and judgment shall be recorded according to the sentence of the majority.

The superior Revenue-authorities will from time to time issue such rules of practice for the guidance of the officers employed on this duty, or the panchayats, as they may consider necessary.

8. No appeal shall be allowed from such decisions which shall be immediately executed and maintained, unless the Commissioner, subject to the control of the *sadr* Board of Revenue, should think proper, for any special reason, to direct that the case shall be submitted to another panchayat for decision.

9. Any suit brought before any Court of Justice to set aside a decision made in conformity with the above rules, shall be non-suited with costs.

10. In like manner any suit brought before any Court of Justice against the arbitrators, collectively or individually, appointed in conformity with the rules prescribed, to recover from them the value of the property lost by the decision founded on their award, shall be non-suited with costs.

11. It is hereby declared that the rules concerning malikana contained in section 5, Regulation VII of 1822, were intended to have a prospective effect only, and

When Collector may
summon panchayat.

Procedure of pan-
chayat.

Bar of appeal ; sub-
mission to second pan-
chayat.

Also suits against ar-
bitrators.

Intention of rules as
to malikana in sec. 5,
Regulation VII 1822.

to be applicable solely to settlements made under that Regulation, and to recusance tendered at the completion of such settlements.

12. It is further enacted that the village - accounts which are required to be kept in such manner and form as has heretofore been the custom, or in such other mode as may hereafter be prescribed by the Boards of Revenue, shall be prepared in duplicate sets ; one for deposit in the office of patwari, and one for deposit in the office of Collector of the district in which the respective estates or tenures may be situated, and whenever the office of a kanungo may be established, a third copy shall be prepared and deposited in that office.

13. The several accounts required for deposit in the Accounts to be fur- pargana and zilla revenue-offices, as d, &c. above stated, instead of being delivered at the expiration of every six months, as prescribed by the rules at present in force, shall be furnished in such mode and at such periods as the Boards may direct.

They shall be opened to the inspection of every person concerned desirous of examining them.

14, 15. [*Repealed by Act No. X of 1859.*] •

16. It shall be competent to the Governor General in Council to appoint to any revenue-jurisdiction a Deputy Collector with the powers hereinafter specified.

Appoint- ment of De- puty Collectors. Persons eligible to office, and how ap- pointed. 17. The office of Deputy Collector shall be open to Natives of India of any class or religious persuasion.

The persons selected shall be appointed by the Governor General in Council, and shall receive their commissions from Government in the usual mode, under the signature of the Secretary in the Revenue Department.

18. The Deputy Collectors will receive a monthly allow- Monthly allowance how fixed, and suscep- tible of increase. ance, to be fixed by the Governor General in Council, and to be suscep- tible of increase, from time to time, as their conduct may appear to entitle them respectively to such consideration.

19. [*Repealed by Act No. X of 1873.*]

20. The Deputy Collectors appointed under this Regulation are to be in all respects subordinate to the Collector under whom they may be placed, and are required to perform all duties assigned to them by that functionary.

21. It will be at the discretion of the latter officer to employ them in settlement-duties under the provisions of Regulation VII, 1822, in the superintendence of the Government khas mahals, and generally in the transaction of any other part of the duties of a Collector.

22. All proceedings held by a Deputy Collector appointed under this Regulation shall be recorded in his own name and on his own responsibility, subject to the revision and control of the Collector, and appealable to the superior authorities in the usual course.

23. Provided always, that the Collector is competent to resume the duties which he may have committed to the Deputy, assigning his reasons for so doing for the information of the Commissioner.

24. Provided also that the Revenue Commissioners, whenever they think proper, may interfere with any arrangements made by the Collectors for the employment of the deputies, or the distribution of business to be assigned to those functionaries, subject to the general control vested in the Sadr Board of Revenue or the Government, as the case may be.

25. A Deputy appointed under this Regulation shall not be removeable but for misconduct, and with the sanction of the Governor General in Council.

Whenever there may be reason to believe that a Deputy is disqualified by neglect, incapacity or corruption for continuance in office, a report shall be submitted by the local authorities, through the channel of the Sadr Board of Revenue, for the consideration of the Governor General in Council, who shall be competent to suspend him, and order a further inquiry into the conduct of such Deputy, or to direct his immediate dismissal, as may appear just and proper.

ACT No. VIII (B.C.) OF 1879.

An Act to define and limit the powers of Settlement Officers.

WHEREAS it is expedient to define and limit the powers of Settlement Officers: It is enacted

Preamble.

as follows:—

1. This Act extends to all the territories under the administration of the Lieutenant-Governor of Bengal, and

Extent.

it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Commencement of Act.

2. Bengal Act No. III of 1878 (*an Act to define and limit the powers of Settlement Officers with respect to enhancement of rent*) is hereby repealed.

Repeal of Bengal Act III of 1878.

3. In this Act—

‘Settlement Officer’ means the Collector or any officer in charge of the revenue jurisdiction of a district, and includes any Assistant Commissioner, Deputy Collector, or Sub-Deputy Collector whom the Collector or other officer as aforesaid may authorize to conduct the enquiries and proceedings connected with any settlement of land-revenue, and any officer who may be appointed by the Lieutenant-Governor to make any such settlement.

‘Settlement officer.’

‘Under-tenant’ means any holder of a heritable and transferable intermediate tenure between the Government and the ryot other than a zemindar.

‘Under-tenant.’

4. Nothing contained in section 51 of Regulation VIII

Settlement proceedings not affected by certain Acts.

of 1793, or in sections 13, 14, and 17 of Act X of 1859, or in sections 14, 15 and 18 of Bengal Act VIII of 1869,

shall affect any settlement proceedings under Regulation VII of 1822, or under any other law for the time being in force for the regulation of settlements of land-revenue.

5. In any such settlement proceedings the rent recorded as demandable from each ryot

Rent to be in accordance with rates sanctioned by the revenue-authorities.

shall, except as herein otherwise provided, be in accordance with the general rates sanctioned or subsequently

approved for adoption in such settlement by the revenue-authorities from time to time empowered in that behalf by the Lieutenant-Governor.

6. The Settlement Officer may, on some one or other of the following grounds, and not otherwise, record a higher rent as demandable from any ryot having a right of occupancy than the rent which was previously paid by him, *viz.*

(i) That the higher rent so recorded is calculated on rates which are not above the prevailing rates payable by the same class of ryots for land of a similar description and with similar advantages in the surrounding neighbourhood.

(ii) That the enhancement is not greater than is justified by the increase which has taken place in the productive powers of the land otherwise than by the agency, or at the expense, of the ryot since the rent of the ryot was last fixed.

(iii) That the value of the produce of the land has been increased otherwise than by the agency, or at the expense, of the ryot since the rent of the ryot was last fixed; and that such higher rent does not bear a higher proportion to the rent of such ryot as last fixed than the normal price of produce at or about the time of the present settlement bears to the normal price of similar produce which prevailed at or about the time when such rent was last fixed.

(iv) That the value of the produce of the land has been increased otherwise than by the agency, or at the expense, of the ryot since the last previous settlement of the lands was made; and that such higher rent does not bear a higher proportion to that which would have been the rent of lands of a similar description and the same area, according to the rates of such previous settlement, than the normal price of produce at or about the time of the present settlement bears to the normal price of similar produce which prevailed at or about the time of such previous settlement, as recorded in the papers of such settlement, or as otherwise ascertained and certified by the Settlement Officer.

(v) That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Rules for determining rent recorded as demandable.

7. The rent recorded as demandable from an under-tenant shall be determined in accordance with the following rules:—

(a) Whenever the Settlement Officer shall find any person holding as an under-tenant, he shall first ascertain and record whether the tenure so held is binding as against the Government.

(b) If the Settlement Officer finds the tenure to be so binding, the rent recorded as demandable from such under-tenant shall in no case be higher than an amount which shall be ten per cent. below the aggregate of the rents recorded as payable to him from the subordinate under-tenants and ryots whose holdings fall within his tenure.

(c) If the Settlement officer shall find that the tenure is not binding as against the Government, he shall first determine the proportionate amount of the demand of land-revenue to be assessed upon the lands included in the tenure in accordance with any orders of Government for the time being in force regulating the demand of land-revenue, and shall record the rent payable by such under-tenant at such a sum not being less than such proportionate amount of land-revenue or more than the aggregate of the rents recorded as payable to him from the subordinate under-tenants and ryots whose holdings fall within his tenure as may seem fair and equitable with reference to the character and circumstances of the tenure.

In a case decided in 1869 by Norman and Jackson, JJ., it was held that a deduction of 15 per cent. from the gross rent is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed.—3 B. L. R., A. C., 270.

8. When the rent demandable from any under-tenant or ryot is recorded at an amount below that to which the rent of such under-tenant or ryot might have been enhanced under this Act, it may be recorded that such under-tenant or ryot shall from time to time be liable to pay increased rent from such dates as may be fixed by the Settlement Officer, until the rent paid by him reaches the amount which the

Procedure when rent demandable is recorded below that to which it might have been enhanced.

Settlement Officer may determine to be properly payable by him under this Act.

9. Whenever a higher rent has been recorded as demandable from any under-tenant or ryot than the rent previously paid by him, the Settlement Officer shall cause to be published a copy of the *jummabundi*, or extracts therefrom, specifying in respect of each such under-tenant or ryot the rent recorded as payable by him, and, in the case of a ryot, the clause or clauses of section 6 of this Act under which his rent is enhanced.

Such publication may be lawfully made by affixing a copy of the *jummabundi*, or of such extracts therefrom as the Collector may think fit, at the mal-cutcherry of the village to which the *jummabundi* relates, or at some other conspicuous place therein, and by proclamation by beat of drum in the said village to the effect, that the said copy or extracts have been so affixed, and that the *jummabundi* can be inspected at the office of the Settlement Officer.

Act X of 1859 was probably not intended to modify in any way the law of settlements. But after it was passed, the High Court held that sections 7 and 9 of Regulation VII of 1822 must now be read as qualified by section 13 of Act X of 1859; that Government, in making a settlement in a Government estate, is in the position of an ordinary zemindar, and is bound to serve a notice of enhancement (see 6 W. R., Act X. 5; 16 W. R., 153; 20 W. R., 207; 21 W. R., 410), and that such notice must state the grounds of enhancement. These rulings considerably curtailed the powers of Settlement Officers and virtually set aside the principle that the State should be unfettered in the exercise of its paramount right of determining the share of the produce of the soil which should be taken as revenue for State purposes.

An alteration was made in the law by Bengal Act III of 1878. The moral influence of Revenue Officers had in the meanwhile been further diminished by the transfer of rent suits to the Civil Courts. The Civil Courts required such strict proof that zemindars found it impossible to enhance. It was necessary to prove that the enhancement notice had been served, and also that it was in due form—no easy matter. The difficulties of conducting settlements came prominently to notice in the Midnapore district in the case of the Bulrampore, Majnamuta and Jallamuta estates. Separate suits had to be instituted against a large number of ryots before the rates were established, and the collection of the enhanced rent was delayed for years. Act III of 1878 (B. C.), while leaving the power of the Civil Court intact, threw the initiative on the ryot, and compelled him to resort to the Court within a limited period of three, subsequently extended to four, months. But it left the grounds of enhancement unaltered, as well as the necessity of giving specific and technically precise notice of such grounds to each ryot individually, and it was soon found that the difficulties in the way of

establishing the rents assessed by the Settlement Officer on the tenants had not been removed by the new law.

The difficulties were found to be so insuperable, that Act VIII of 1879 (B. C.) was passed to remedy them. By this Act the general publication in a village of the *jummabundi* was made a sufficient service of the notice of enhancement, thus removing the difficulty which had attended the proof of service of individual notices. The specification in the notice of enhancement of the rent previously paid by each ryot, which was required under the Rent Laws of 1859 and 1869, was also dispensed with, it having been found that, in many cases, in dealing with the settlement of private estates, the Settlement Officers could not ascertain the rents previously paid by the ryots to the landlords.

Act VIII of 1879 (B. C.) declares that the rents recorded by the Settlement Officer as demandable from the occupancy ryots are binding, unless in a civil suit, to be instituted within four months of the publication of the enhanced *jummabundis*, it is shown that they have not been assessed in accordance with the Act. Thus there is now no impediment to a trial on the merits. But every ryot in an estate may file a suit to contest the enhanced rent. Thus rates, laboriously and carefully determined by an expert, after a minute and patient investigation made under the most favourable circumstances, are revised by an officer of no agricultural experience, conducting the inquiry under circumstances most unfavorable to a good decision. This power of the Civil Court of revising the Settlement Officer's rates should be taken away. No such power exists in the North-West-Provinces (see s. 75, Act XIX, 1873). The new Rent Law is a step in the right direction, and it is to be hoped that Government will no longer permit the ripe and mature decisions of its best Revenue Officers to be subject to revision by inexperienced Moonsiffs.

10. Every under-tenant and ryot shall be liable to pay the rent recorded as demandable from him under this Act, unless it shall be proved in any suit instituted by such under-tenant or ryot to contest his liability to pay the same that such rent has not been assessed in accordance with the provisions of this Act.

But nothing in clause (c) of section seven of this Act, or in this section, shall be held to limit the discretion of the Court in determining, in any suit under this section, the rent of an under-tenant of the class described in the said clause (c).

No suit under this section shall be instituted otherwise than within four months after the publication of the *jummabundi*, or extracts as aforesaid, in the village in which the lands which are the subject of the suit or any part thereof are situated.

11. In all suits instituted to contest the rent recorded as demandable under this Act, the Court shall, if it modifies or sets aside such rent, proceed to determine the rent payable by the plaintiff in accord-

Procedure in suits to contest rent recorded as demandable.

ance with this Act, and if any arrears of rent at the rates determined by the Court are found to be due, shall make a decree in favor of the defendant for such arrears, with such cost as may seem proper.

12. If publication of the copy of a *jummabundi* or of extracts therefrom as provided in section 9 of this Act is made within the first six months of the year of the era current in the district, the enhancement may take effect from the beginning of the year in which such publication may have been made; otherwise it shall take effect from the beginning of the next following year.

13. Rent recorded as demandable under this Act, or fixed by a final decree in any suit as aforesaid, shall not be liable to enhancement until ten years shall have elapsed from the date on which the settlement took effect, or until the period of the settlement shall have expired, whichever may first occur.

14. The provisions of this Act shall apply to all settlement proceedings under Regulation VII of 1822, which may have been confirmed after the commencement of Bengal Act III of 1878, or which may hereafter be confirmed or sanctioned by the Revenue Authorities from time to time empowered in that behalf by the Lieutenant-Governor whether such proceedings shall have been commenced before or after the commencement of the said Act.

GENERAL SUMMARY.

TWO CLASSES OF LAND-REVENUE SETTLEMENTS.

LAND-REVENUE settlements are divided into two great classes—ryotwari and zemindari—the latter being called also mahalwar or mauzawar. Nearly all Bombay, most of Madras, and the greater part of Assam are under a ryotwari settlement, while in Upper India, meaning by that term the North-Western Provinces, Oudh, the Central Provinces, and the Punjab, the form of settlement is zamindari.

I. Ryotwari Settlement.

A ryotwari settlement means the division of all arable land, whether cultivated or waste, into blocks or lots; the assessment of each block at a fixed rate for a term of years; and the exaction of revenue from each occupant according to the area of land, thus assessed, which he occupies. That area may either remain constant, or may be varied from year to year, at the occupant's pleasure, by the relinquishment of old blocks or the occupation of new, the latter being either land hitherto waste, or land which has been relinquished by some body else. The occupant holds under an annual lease from the Government, and enjoys all the advantages of absolute proprietorship, subject to payment of the revenue due on the lands he holds during the year. Under this system each occupant deals directly with the Government, and is responsible for his own revenue assessment only. There are two and a half millions* of such occupants in the ryotwari districts of the Madras Presidency, with an average holding of eight acres each; while on the Bombay side, without counting Sindh, there are about a million and a half of occupants,† with an average holding of eight acres in the northern division of the Presidency, 32 acres in the central division, and 23 acres in the southern division; 19 acres being the average of all together. A ryot-

* 1876-77	... 2,513,935
1877-78	... 2,569,101
1877-78	... 1,382,803

wari settlement is thus peculiarly a settlement with the peasantry, as tenants of the State, enjoying a tenant-right which can be inherited, sold, or burdened for debt in precisely the same manner as a proprietary right, subject always to payment of the revenue, that is, the rent due to the State.

II. Zamindari Settlement.

A zamindari or mauzawar settlement, on the other hand, takes the village (mauza) as the unit of assessment, and recognizes the proprietary right of the person or persons (zamindars) who hold the village lands, whether in individual or joint possession. The area of the village depends upon circumstances ; in the North-Western Provinces and Oudh, the average village has an area of about 600 acres ; in the Punjab nearly 900 acres ; in the Central Provinces, about 1,300 acres. The assessment is a fixed annual sum payable on the village during a fixed term of years.

DIFFERENCE BETWEEN THE TWO SYSTEMS.

The difference between the ryotwari and the zamindari systems is usually summed up in the statement that the former is a settlement by fields, and the latter by villages. In detail, the main points of contrast are the following :

(1.) The ryotwari landholder can take up or relinquish fields annually at his pleasure, whereas the zamindari landholder has no such power.

Variable liability.

(2.) Under the ryotwari system every block of arable waste has its assessment fixed upon it, and can be taken up by any one who chooses to pay the assessment ; but

Responsibility for waste land.

under the zamindari system the assessment of the village remains the same during the entire settlement term, whether the zamindar leaves the waste unbroken, or brings every inch of arable land under the plough. It follows that reclamation of waste lands under the ryotwari system involves an immediate gain of revenue to the Government, while under the zamindari system the gain is deferred till the next revision of settlement.

(3.) The ryotwari landholder is responsible for the revenue assessed upon his individual holding only,* whereas a distinguishing feature of the zamindari system is the principle of joint and several responsibility. Where the zemindar is a single individual, he alone, of course, is responsible for the revenue demand on his estate. But the majority of villages are held by coparcenary bodies of zamindars who manage their estate more or less in common, and each of whom is responsible, not only for that share of the revenue demand which corresponds to his own interest, but also for the revenue liabilities of his co-sharers, in case the latter should make default.

TERRITORIAL LIMITS OF EACH SYSTEM.

The territorial limits of these two forms of settlement have been mentioned above. But there are numerous instances of tracts which, for the sake of provincial uniformity, have been brought under one form of settlement, while the other would have been equally applicable. The

Central Provinces. Central Provinces have been settled on the mauzawar system, though certain districts were well adapted for a ryotwari settlement; and, in fact, a settlement essentially ryotwari has recently been concluded in one large tract (Sambalpur). It seems now to be admitted that the Jhansi division of the North-Western Pro-

vinces might have been settled on principles closely analogous to those of the ryotwari system. In parts of the

Punjab Frontier districts. Punjab, the principle of joint responsibility has been engrafted by the Government on accidental and inco-

herent groups of revenue payers. The converse process may be seen in parts of the Madras and Bombay Presidencies. Under the old revenue administration of Madras, the joint-rent or village-rent system, closely resembling the coparcenary zamindari of Upper India, prevailed extensively in many districts, but always tending more and more towards

* A certain degree of joint responsibility in 'survey fields,' *i. e.*, blocks or lots of lands, is admitted under the Bombay rules, but the general principle is as stated in the text.

that pure ryotwari system which has superseded it in all the new settlements. Narwadari or Guzerat tenures. bhagdari tenures in Guzerat present

a still more exact resemblance to village communities in their revenue aspect; but these, too, are gradually losing their distinctive character as the co-sharers grow more disposed to measure their individual liability by the assessment fixed on their actual holdings, and to ignore the principle of joint liability altogether. A mauzawar settlement might perhaps have been practicable in parts of the Deccan, where "divisions of land held by brotherhoods of mirasidars or

proprietors,"* corresponding very nearly with the coparcenary zamindars of the North-Western Provinces, existed within villages as late as 1840. It is barely two years since the mirasidars of the Chingleput district of Madras were induced to accept a compensation for the rights they asserted in all the waste lands of their villages; and

in 1875 it was judged necessary to compensate Sindh zamindars, by a liberal allowance of free waste, for the separation and assessment of the uncultivated lands included in their old estates. Under the principles of the settlement school of the North-Western Provinces, it is possible that the first of these two classes of landholders might have been treated, at least in earlier years, as village communities, while the latter might have been recognized as owners of their estates (exclusive of excess waste), and admitted to settlement on the zamindari system.

CONTROVERSY AS TO THE RELATIVE MERITS OF THE TWO SYSTEMS.

It is worth while to notice briefly, in this connection, the controversy as to the respective merits of mauzawar and ryotwari settlements, revived on several occasions during the last forty years. The mauzawar settlement of the North-Western Provinces had the advantage of being the first example of a regular settlement of land-revenue

* Letter of the Revenue Commissioner, Poona, dated 17th October 1840, para. 3.

made for a long term of years on certain fixed principles. It was also recommended by the abilities of the school of Revenue Officers who made and worked it, and who handed it down to successors equally interested in its maintenance.

Bombay settlement. The Bombay ryotwari settlement coming into the field at a later date, had to shew reasons for adopting a different method. It was still in its infancy when the two Superintendents of Settlements were called upon to consider a number of documents "explanatory of the system of settlement being pursued in the North-Western Provinces," and to adopt therefrom any measures which might be useful. In an elaborate report, dated the 17th September 1840, they found that the method of assessment was practically the same in both systems,* while the ryotwari system of settlement by fields had the advantage in being "of simpler execution in the first instance, and likely to require fewer adjustments afterwards, as interfering less with the existing tenures of landed property, and offering greater facilities for effecting its sale and transfer, while affording to the poorer and less influential portion of the community a better protection against injustice and oppression." Later on, in 1865, when the Bombay

Mysore settlement. system of survey and settlement was about to be introduced into Mysore, the Government of India again conceived doubts† "whether some of its rules might not with advantage be modified," and the modifications hinted at were in the direction of the settlement methods of Upper India. About‡ the same time a much keener debate was going on

Sindh settlements. over the Sindh settlements. For single and joint zamindari estates in Sindh, the Government of India believed the North-West system to be much better adapted, and much cheaper, than the Bombay system; while as to the "petty proprietorships," consisting of minute individual holdings, it was

* This was practically the case in the early days of the first regular settlement. But the present method of assessment in the North-Western Provinces, as will be explained later on, differs entirely from any method ever pursued in Bombay.

† Foreign Department letter, No. 84, dated 18th February 1865.

‡ Government of India letters, No. 2280, dated 30th March 1864; and No. 1417, dated 14th February 1865.

urged that either system was applicable, but that the North-

Issue of the contro-
versy.

West system would be much the less expensive. In all these cases the result has been the ultimate triumph of the

Bombay system. In Sindh this is the more remarkable, as the original intention had been to make a mauzawar settlement of large zamindaries and coparcenary estates. As for Madras, after extensive and generally unfavourable experience of large zamindaries, the ryotwari principle was established on a strong footing by Sir Thomas Munro's settlement in the beginning of the century; and though its effects were depicted in frightful colours by the Agra Board of Revenue in 1840, as a contrast to the beneficial system of the North-Western Provinces, yet the present settlements, beginning in 1853, have gone on unchallenged to the present time,—perhaps protected by the Local Government's initial manifesto to the effect that the ryotwar system is decidedly in advance of settlements by villages or other communities, and that in the progress of society the latter must give place to individual holdings.

GENERAL REASONS FOR EACH SYSTEM.

On the whole, it may be said that the two systems of settlement correspond in a general way to natural differences of land-tenure. Where the State found two distinct classes possessing interests in the soil, each with its own rights and duties, the landlords as payers of revenue, and the tenants as payers of rent, there the form of settlement was naturally zamindari, otherwise called mauzawar, because under this system every village can be treated as a revenue unit. Where, on the other hand, as in Southern India, the State had to deal with only one stratum of occupants, each man being directly responsible for the fields actually in his cultivation, the ryotwari form of settlement was the simplest. Little success has attended some recent attempts to introduce either system into the

Quasi-zemindari leases in Bombay and Madras.

region of the other. In Madras and Bombay it was proposed to grant leases for a term of years to occupants of considerable holdings, at a reduced assessment, on condition that no part of the holding should be relinquished during the term. This would have been a

step towards the North-West system ; such holdings, if large, might correspond in some degree to the estates of a mauzawar settlement, while the aggregate assessments of the component blocks, less the reduction granted, would represent, as it were, the lump assessment of the estate. But in neither Presidency has the project ever been put into effect. In Assam it has been

in Assam.

the vast majority of ryots preferring the plan of annual leases. Conversely, an attempt made to establish a ryotwari settlement in a small tract of the North-Western Provinces (the Dudhi tappas of the Mirzapur district) has

Ryotwari settlement of the Dudhi tappas.

ended in very partial success. In the progress of the undertaking it was found that rights analogous to those of the zemindars existed, and must be taken into account ; and the bulk of the peasantry are tenants of these quasi-zemindars, and not tenants of the Government, as the in-

Mauzawar settlement in Burma.

tention had been to make them. In British Burma, again, the experiment of mauzawar settlements proved a failure, owing to want of cohesion among the members of those fortuitous groups of holdings which in Burma correspond approximately to the village of Upper India.

FIVE STAGES OF SETTLEMENT WORK.

The operation of making a settlement of land-revenue consists of five stages, *viz.* : (1) demarcation of boundaries, (2) survey, (3) inspection and classification of soils, (4) assessment, (5) the record of rights.

I. Demarcation of Boundaries.

I. Demarcation of boundaries is made in the first instance by the villagers themselves. They are called upon beforehand to set up such marks as shall suffice to indicate the boundaries of their villages and of the fields within the village. Where they fail to do this, it can be done by Government agency at their expense. Disputes

Settlement of disputes. as to boundaries are decided by the officer conducting the demarcation. In the Central Provinces the Punjab and Oudh such

sions have the force of a regular judicial proceeding, Settlement Officers being invested with judicial powers for that purpose. Elsewhere disputes are decided summarily on the basis of possession, leaving the parties to try the question of legal right in the Civil Court.

With a single exception, to be noted hereafter, demarcation of boundaries is effected by the same agency as that which subsequently executes the survey. During the early history of the settlement in Sindh, as also in Madras, the Settlement Officer was required to demarcate boundaries in advance of the surveyor. This plan never worked well; the Settlement Officer could not keep pace with the surveyor, and his demarcations were not sufficiently clear and permanent to satisfy the requirements of the latter.* Sindh settlements have been conducted on the Bombay system since 1863, and in 1864 the demarcation of boundaries in Madras was made over to the survey department. The single exception to this general rule of demarcation by the survey officer is to be found in the five latest-settled districts of the North-Western Provinces, where the first step in settlement work has been the demarcation of boundaries by the Settlement Officer, and the next a cadastral survey by independent and scientific agency.

It is hardly necessary to remark that the permanent demarcation of village boundaries is no less indispensable under a ryotwari than under a zamindari settlement, seeing that every field must be referred to some local area with a recognized name. But in a zamindari settlement, only the boundaries of the estate or the village need to be permanently demarcated, while the boundaries of fields are demarcated merely for the purposes of survey, without any restriction upon the owner's or tenant's liberty to alter them subsequently as he pleases. Under the ryotwari system, on the other hand, the boundaries of blocks or 'survey fields' are unchangeable, and are denoted by marks as solid and perma-

* See pages 70 and 71 of Madras Administration Report, 1875-76, and pages 20 and 24 of papers relating to the Revenue Survey in Sindh, Bombay, 1875.

ment as those which distinguish the lands of one village from another.

Permanent boundary-marks, whether of fields or villages, are stone or masonry pillars, placed at the main boundary angles. They are masonry over most of the North-Western Provinces and Oudh, where stone is not to be found. The cost of repair and maintenance is chargeable on the revenue-payer.

II. Survey.

II. The object of the survey is to frame village maps which shall shew the position, area, and shape of every field in the village. The scale of such maps is usually either 8 inches or 16 inches to the mile. The methods of survey employed in the various provinces have undergone considerable modification from time to time.

The scheme for the first regular settlement of the North-Western Provinces embraced two distinct surveys—one scientific, and conducted by the Surveyor General's department; the other unscientific, and managed by the Settlement Officer. The scientific or Revenue Survey was to prepare maps on the scale of four inches to the mile, showing the village boundaries and the geographical features of the country, such as the village site, roads, rivers, lakes, &c. The Settlement Officer's survey was the field survey. The assistance derived by the Settlement Officer from the Revenue Survey consisted in (1) an accurate record of the *total* area of each village; (2) a map showing the exact configuration of the village, with the cultivated area marked off in blocks, apart from the waste, but not divided into fields; and (3) maps for large tracts of country, showing the relative position of all the villages in the tract. The two former were of use in checking the areas and maps of the field survey, while the topographical maps were of service in camp. Besides these helps, it was also intended that the Revenue Surveyor should furnish the Settlement Officer with details of the cultivated and culturable area of each village, and with an extensive array of village statistics; but these particulars were found to be expensive and untrustworthy, and were soon discontinued. The Revenue Survey, then, with objects limited as above,

was effected throughout the North-Western Provinces about the same time as the first regular settlement,—*i. e.*, between 1833 and 1844; and similarly the regular settlements of other Provinces of Upper India have been preceded or accompanied (and in a few instances followed) by the Revenue Survey, which lasted from 1860 to 1869 in Oudh, from 1854 to 1874 in the Central Provinces, and has been going on since 1846 in the Punjab. Assam was brought under the Revenue Survey between 1849 and 1874.

The Revenue Survey cannot be regarded as the basis of settlement in any of these Provinces. It is merely of secondary usefulness, and has not been reckoned in the present Note as a part of settlement operations.

The Cadastral Survey may be regarded as a development of the Revenue Survey. It exists in five districts of the North-Western Provinces. Here the Revenue Survey maps are on the scale of 16 inches to the mile, and shew the fields. The Cadastral Survey thus combines in itself the Revenue Survey and the field survey. It had its origin in 1872, and has hitherto been tried only in the five districts above mentioned, in a few petty Bengal settlements, and in certain permanently-settled districts of the North-Western Provinces, which do not come within the scope of this Note.

Excepting these districts, the field survey in Upper India is made by the Settlement Officer, with the help of the patwaris (or village accountants) and of trained native surveyors. This agency, though not scientific, nor organized as a permanent department, has always been found perfectly adequate to the work required of it. It furnishes the Settlement Officer with village maps on the scale of 16 inches to the mile, plotted out into fields as they actually exist, and shewing boundaries and areas with sufficient accuracy for all revenue purposes. The field survey now going on in the Punjab is one of this kind.

The Revenue Survey, as practised in Upper India, was recommended to the Government of Bombay in 1840, but was rejected as unnecessary for settlement purposes. The

(*b.*) The Cadastral Survey.

(*c.*) The Settlement Officer's survey in Upper India.

(*d.*) The Bombay Survey.

first Bombay settlements were made with the help of a rough and rapid survey effected by the Settlement Officer. The work was of a less minute nature than in Upper India, where the fields are much smaller than the blocks into which land is divided by the Bombay Survey; and the extensive waste lands of those days were measured in a comparatively summary fashion. But in course of years, as cultivation extended, and the value of land increased, the Bombay Survey grew more elaborate, and has lately assumed a quasi-scientific character. The great trigonometrical triangulation was adopted as its basis many years ago, and more recently it has taken to working in connection with the Topographical Survey of India.

No Revenue Survey has ever been made in Madras. The field survey there has this peculiarity
 (e.) The Madras Survey. —that it is effected by a special department, distinct from that to which

the Settlement Officer belongs. Consequently, it has been quasi-scientific from the first. It is connected by minor triangulations with the Great Trigonometrical Survey, and its topographical accuracy in this respect is now very complete. The field in Madras, as in Bombay, means a block of land measured out by the surveyor; but the settlement department, when the survey is over, has the duty of measuring up subdivisions of such fields and marking them on the map.

Thus it would appear that the tendency of field surveys has been to work round to scientific methods. The change in this direction is noticeable alike in Madras and Bombay, and is still more strikingly

exemplified in the North-Western Provinces, where the usual field survey, in the five districts last settled, has been superseded by a professional survey of a highly scientific form, *viz.*, the cadastral. But the cadastral survey has not been adopted in the Punjab districts now under revision of settlement, where the field survey is conducted in the old fashion by Settlement Officers with a staff of native surveyors and patwaris. The advantage of a scientific field survey is, that it does not need (or should not need) to be done over again at revision of settlement. On the other hand, the scientific (or cadastral) field survey is very

expensive, and the question of its introduction into Upper India in future revisions of settlement will probably be decided mainly by its comparative costliness. Meanwhile it has been adopted as the basis of the Burma settlement. It is at present in progress in the permanently-settled districts of the North-Western Provinces, where the old field surveys are comparatively imperfect. It is also on trial in certain temporarily-settled tracts of Bengal, now coming under revision.

III. Inspection and Classification.

III. The next step consists in the inspection of villages and the classification of villages and soils. Inspection extends to the whole tract of country immediately under settlement, and the Settlement Officer is required to visit as large a proportion as possible of the villages contained in it, so as to make himself acquainted with the general features of the tract and the condition of each village. The extent of the tract settled at one time varies in differ-

ent parts of India. It is largest in Madras, where it may comprise a whole

subdivision of a district, with an area of 1,000 square miles, and smallest in Bombay, where it may be an arbitrary local area of a few square miles only. In Upper India it usually coincides with the pargana, in other words, the smallest territorial division of the district for revenue purposes. With the area of the tract, the number of villages also may vary. On the Bombay side separate proposals for the settlement of fifteen or twenty villages are not uncommon; elsewhere the number of villages is much greater, and may amount to several hundreds.

Where villages differ much in character of soils or in cultivation, they must be divided into

Assessment circles. groups, or assessment circles, with reference to similarity in their general conditions. This grouping or classification of villages is one of the first results of inspection. The Settlement Officer is usually guided by natural conditions, such as broad distinctions of soil, or the differences between upland and lowland tracts, or liability to fluvial action, or differences of rainfall—a point of much importance in parts of Bombay. Within

the group, villages may be classified according to artificial conditions, such as proximity to markets, style of cultivation, or nature and quality of watersupply for irrigation.

The classification of soils is everywhere based on the same general principles, but there is a wide difference between the manner in which these principles are worked out in Upper and Southern India. In Upper India the classification is either by natural or artificial soils or both, according as large admixtures of manure have altered the natural qualities of the soil. There is no prescribed list of soil-classes, and the classes adopted in practice are usually few in number. The system of classification consists in the registration of natural and artificial soils at the time of the field survey, and these are subsequently tested at the time of inspection by the Settlement Officer. In its later development in the North-Western Provinces, the process consists in the demarcation by the Settlement Officer himself of recognized homogeneous areas within the village boundaries—an operation which can subsequently be entrusted, as the work progresses, to a trained staff under the Settlement Officer's supervision. These areas are distinguished primarily by their relative proximity to the village,—*i. e.*, their facilities for receiving manure, and secondarily by their natural qualities of soil.

In Southern India, natural soils alone are looked to in the first instance. The classification is effected by a special agency, who work according to fixed rules; there is a prescribed list of soil-classes; the processes employed are of minutely technical character; demarcation of homogeneous blocks* is not attempted within the village, every field being independently classed on its own merits; and the result is a long valuation-scale, upon which every field is assigned its place with a quasi-scientific uniformity and exactitude. In Madras, for example, the soil-classes occurring in most districts

* In the later Madras settlements, an attempt has been made to classify lands into homogeneous blocks, instead of valuing every field on its independent merits. This plan is at variance with the spirit of Madras classification, and has proved but partially successful; the attempt, however, is interesting as an adaptation of the North-West system.

are seven in number, and each class has on an average four subdivisions ; thus every field must, in the first instance, be ranked in one of twenty-eight different grades, though subsequently, when the process of assessment begins, the number can be reduced to nine or ten by amalgamation of grades approximately equal. In Bombay there are three orders of soil, and nine classes under each order ; the class depends on the depth of soil, as ascertained by the classifier by actual digging ; the valuation has then to be corrected for one or more of seven possible faults ; and as it is ultimately expressed in annas and pie, from a maximum of one rupee to a minimum of two annas, it is obvious that the grades of soil may theoretically be as many as the number of pies in fourteen annas,—*i. e.*, one hundred and sixty-eight.

Though primarily concerned with natural soils, the Madras and Bombay systems of classification do not ignore the effect of manure. The ‘permanently improved’ lands of Madras, and the ‘garden’ lands of Bombay, form separate classes more or less corresponding to the artificial soils of Upper India ; and other manured lands, though not shewn as a separate class, come into the highest grades of their respective orders of soil.

Irrigated lands, whether in Upper or Southern India, are universally distinguished from unirrigated ; and, as a rule, this distinction forms an important element of assessment.

IV. Assessment.

IV. By the time settlement operations enter upon their fourth stage,—that of assessment, the Settlement Officer has before him a number of general statistics collected during the survey, inspection and classification of each village. In addition to this, the Settlement Officer of Upper India has subdivided the village into homogeneous tracts, whether of natural or artificial soil, while the Settlement Officer of Madras or Bombay has provided himself with a scale showing the relative value of every individual field—expressed under the Madras system in terms of the soil-class and grade to which it belongs, and on the Bombay side still more plainly in annas and pie. In these two latter

cases, obviously all that is now wanted is a rate of assessment per acre, or revenue-rate, as it is called. In Madras it is necessary to find a revenue rate for every class of soil, and for each grade in the class ; and by applying this to the area of each field, according to the class and grade, the assessment of the field is determined, and the object of the settlement is accomplished. In Bombay the affair is simpler still, for a maximum rate is all that is needed, *viz.*, a rate applicable to a field classed at 16 annas, whence the rates for other fields can be calculated at once from their relative classification-values.

The Madras method of arriving at revenue-rates consists in ascertaining, by actual experiment and all other possible means, the average yield of certain staple crops on each class and grade of land, converting this into cash at the average harvest prices of the last twenty years, deducting the expenses of cultivation, and taking half the remainder, less a fair margin for casual losses, as the Government share, *i. e.*, as the revenue-rate per acre upon a field of that kind. This is a method sufficiently laborious, and of only approximate accuracy ; but it rests on demonstrable processes, and can be successfully worked, as experience has proved.

The first attempt at a general land-revenue settlement in Bombay was made on a method very similar to this, *viz.*, estimates of the yield of soil-classes, and of the expenses of cultivation, and assumption of Government demand at 55 per cent. of the net produce. But this plan broke down in 1835, and was then definitely abandoned for the method of assessing the field according to its soil. Of all modes of soil-classification in use throughout India, that of Bombay is incomparably the most elaborate. Nevertheless, it furnishes no guide of itself to the maximum revenue-rates, nor is it followed by any regular process for their determination. They are arrived at, in fact, simply from general considerations. The districts first settled were known to be over-assessed, and they were dealt with on the principle that a light revenue demand with extended cultivation would be more profitable than a heavier demand with cultivation in a stationary

The Madras method of obtaining revenue-rates.

The Bombay method of obtaining maximum rates.

or declining state. Existing assessments and average rates were known, as also the total demand from the tract under settlement, and the actual remissions and realizations during a period of years. Putting these things together, revenue-rates were selected such as would give an assessment that the tract could pay, such rates being graduated according to the rank of each village group in the scale of revenue-paying capacity. The method of the latter settlements does not appear to present any material difference, except that the revenue-rates of similar tracts previously settled have been at hand as guides and standards of comparison. In revising the original settlements of the Deccan districts, the old revenue-rates have been raised with reference to the rise of prices, the increased value of land, and the improvement of communications; that is, with reference to the assumed taxable value of an acre at present, as compared with its value 30 years ago.

Thus the Bombay method is essentially a deductive one.

Deductive character of the Bombay method. It might be represented, in its plainest form, as an arithmetical deduction from arbitrary data. Assuming, on general considerations, a certain sum as a fair revenue demand from the tract under settlement, it is easy to calculate, from the classified area of cultivation, what rate per acre of 1st class land will be required to produce the desired result. The weak points of the system are that this arithmetical process requires no personal acquaintance with the tract under assessment; that the officer who makes the classification has not necessarily any voice in the assessment, but must accept the rates imposed upon his soil-classes; and that, in the application of these general rates, the circumstances of individual villages hardly receive sufficient consideration.

The task before the Settlement Officer in Upper India is to assess the village, not the field.

Method of calculating assessments in Upper India: Rent-rates of the North-Western Provinces and Oudh.

Most of the land in the North-Western Provinces and Oudh is held by tenants paying rent to the proprietor of the village, and the proprietor is assessed to revenue on the gross rental of his estate. One-half of the rental is taken as the share of the Government. It often happens that large areas of land are cultivated by

the proprietor himself; but the Settlement Officer is at no trouble to calculate their produce; he simply estimates them at the rental value of similar lands cultivated by tenants. Thus rents form the basis of assessment, and the Settlement Officer's business is to ascertain the true rental value of each estate. This is done by an elaborate analysis of rents actually paid for the fields comprised in the various tracts into which the village lands have been classified. Eliminating rack-rents and privileged rents, an average

rent-rate per acre is arrived at for each class of land in each village group; and the rental value of each village is

determined by the application of these average rates to the areas of the different soil-classes within its boundaries.

This is the process followed in the North-Western Provinces. That of Oudh generally differs

Oudh rent-rates.

from it in attaching less importance

to average rent-rates than to the actual rent-rates determined by the custom of each individual village; in other words, in estimating the rental value of each village on its own data, with comparatively little reference to the rental value of other villages, though adjacent and similar in their physical conditions. But either method has equally the characteristic of being founded on existing facts, capable of ascertainment with the greatest precision. The Oudh method professes to determine the gross rental of village, and actually does determine it with arithmetical exactitude. The North-Western Provinces method professes to determine the average rental value, first, of each class of land in a given group of villages, and, secondly, of each village, and actually does determine this by wide induction from unimpeachable data.

These methods obviously depend upon the prevalence of

cash rents. Where most of the land is cultivated by proprietors, or where rents are in kind, or customary and nominal, some other means of assess-

ment must be sought. This was the case to a great extent in the Central Provinces, and assessment there was arrived at partly by the method of rent-rates, and partly by the method familiar to the Settlement Officers of five and-thirty years ago as the 'aggregate to detail' process. This con-

sists in assuming a fair revenue demand for the whole tract under assessment, and then apportioning it among the villages, till by repeated correction it is fairly adjusted to the circumstances of each. This is the plan hitherto followed in the Punjab settlements, but it is now being

supplemented or superseded by the calculation of revenue-rates from estimates of gross produce, the Government share being taken at one-sixth. These estimates vary according to soil-classes. Applied to the classified area of an assessment circle, they give the average revenue-rates for the circle, and the assessment of each village can thence be calculated (with due allowance for local conditions) by valuing the soil-classes of the village at their respective revenue-rates.

Certain other points regarding assessment may be briefly noticed. The ryotwari revenue-rates are framed with reference to the profits on average husbandry, and make comparatively little allowance for the habits of the cultivator in individual villages; whereas in Upper India rent-rates vary considerably according to the caste of the tenant, and village assessments, whether calculated on rental value or otherwise, are a good deal modified by the number, caste, and habits of the proprietors.

Under a ryotwari settlement irrigated land is separately assessed. In Madras each class and grade of land has two revenue-rates, according as it is watered or dry, provided the water be not supplied from *private* sources; on the Bombay side the main distinction is between lands growing a wet crop, *i. e.*, rice, and lands producing dry crops, *i. e.*, cereals or millet, and each of these classes has its own maximum rate. In Upper India separate rent-rates are usually framed for irrigated and unirrigated land, where rent-rates are framed at all. Sometimes it is found unnecessary to make the distinction, rents being regulated merely by

Estimates of produce
in the Punjab.

Variations in assess-
ment due to caste, &c.

under the ryotwari
system.

and under the zemin-
dari system.

Assessment of irrigat-
ed lands in Madras,

in Bombay,

in the North-Western
Provinces and Oudh,

the class of soil, on the understanding that the best soils are either irrigated or irrigable, while inferior soils cannot be irrigated with profit. Where rent-rates are not framed, the extent of irrigation is still one of the determining elements in the assessment of a village, and separate revenue-rates are deduced to shew the estimated incidents of the assessment on irrigated and dry lands respectively.

It may be useful to note here the relative extent of irrigation in the various provinces. Setting aside Sindh, where an artificial supply of water is a necessary condition of cultivation, the proportion of cultivated area irrigated in the Bombay Presidency is about 2½ per cent.; in Madras the proportion is 19 per cent.; in the Central Provinces, 6 per cent.; in the Punjab 30 per cent.; in the North-Western Provinces and Oudh, 36 per cent.

The method of assessing irrigated lands varies a good deal. In Madras, where the distinction between wet and dry lands is most sharply marked, the Government of India has frequently recommended a separate water-rate for all lands irrigated from a Government source, whether tank, canal, or river. According to this theory, the field should first be assessed as dry, and then a water-rate per acre should be added. The plan has been adopted in the districts under the Godavery and Kistna canals, but nowhere else. On the Bombay side it is not uncommon to find rice lands assessed separately for land and water; but as irrigation is all from private sources, this water-rate is merely a method of valuation; and, in fact, it is applied equally to the assessment of rice lands dependent wholly upon rainfall. In Sind consolidated revenue-rates are the rule, the dry value of the land being nil. Throughout Upper India the practice now is to make a distinction between wet and dry assessments on canal-watered lands. This plan was tried in certain Punjab districts settled between 1862 and 1869, and has been adopted in the Punjab settlements now in progress. The land is assessed as dry, and then a water-rate is added.

In the North-Western Provinces a rate called the 'owner's rate' is imposed, which secures to the Government its share in such increase in rental value of estate, subsequently to settlement, as is due to the extension of canal irrigation. Lands watered from private sources in Upper India are now invariably assessed at consolidated rates. The experiment of a separate water-rate on such lands was tried in five districts of the Punjab, settled between 1862 and 1869, and resulted in a considerable sacrifice of revenue.

Under the Bombay system each class of cultivation has its own maximum revenue-rate. The principal classes are dry crops, rice, and gardens, with one or two additional varieties in some districts. Gardens have their separate revenue-rates in Madras, as 'permanently-improved' lands; and in a few districts separate rates have been framed for lands specially adapted to the cultivation of sugarcane or tobacco. In Upper India crop-rates have sometimes been taken as a guide to assessment. These are rent-rates or revenue-rates calculated according to the crop, not according to the class of land. They appear only in the earlier settlements.

V. *Record of Rights.*

V. The record of rights is the final work of settlement. Under both the ryotwari and the zamindari systems it consists primarily of the field map and the field register. The former exhibits the position, number, and shape of every field; the latter gives its number, area, and soil-class, shews whether it is irrigated or unirrigated, and adds all fiscal particulars, *viz.*, in a ryotwari settlement, the assessment and the name of the occupant; and in a zamindari settlement, the rent paid, the tenant's name, and the name of the proprietor. In framing the field register, the Settlement Officer frequently finds himself confronted by disputes as to the ryotwari right of occupancy, or the proprietary right of a zamindar. In Madras and Bombay such disputes are at once referred to the Civil Court, and the name meanwhile entered in the register is that of the party in possession. The same rule

The field map and field register.

Questions of ownership how settled in framing the field register.

is observed in the North-Western Provinces; but there the Settlement Officer takes evidence in Court, and records a formal proceeding on the question of possession before making the entry in the register. In all these cases the entry is liable to be changed by the decree of a competent Court. Elsewhere in Upper India the Settlement Officer has power to try and decide the question of right, and the entry made by him represents a judicial decision which the Civil Court cannot modify.

The field register of a ryotwari settlement is recast annually, so as to record the annual changes of occupancy. As the occupant of every field is the revenue payer for that field, the ryotwari field register may also be regarded as the annual revenue-roll. It is a more voluminous record under the Madras than under the Bombay system; for the smallest recognized subdivision of a Bombay field is three-sixteenths of an acre, while a Madras field may be subdivided indefinitely, and every subdivision, down to the hundredth part of an acre, is distinguished by a serial letter, and entered in the register under the number of the field.

The revenue-roll of a mauzawar settlement does not shew the fields at all. It is a list of the proprietors of the estate, shewing the extent of the interest of each, whether measured by proportionate shares (as so many annas in the rupee), or by actual division of the lands; and, finally, the assessment of the estate. The proprietors are jointly and severally responsible for the whole assessment; but the individual liability of each is also shewn, or, more strictly speaking, the liability of each of the recognized divisions of the proprietary body. The number of proprietors in an estate may vary from one to several score, but in any case the estate is treated as a whole, and the proprietors are left to their respective revenue liabilities along the assistance of the Settlement Officer. The results of this apportionment are recorded in the village papers. As a rule, the subdivision is not carried down to the individual, but only to certain recognized groups, within which each individual's share is left unrecorded, as a matter of private

understanding. Something of the same kind, but on a much less extensive scale, is observed with regard to the entry of co-sharers' names in the Bombay field register.

The existence of a numerous tenantry makes the record of rights a more elaborate series of documents in Upper India than in Madras or Bombay. It will be sufficient to mention merely the rent-roll, in addition to the revenue-roll or list of proprietors. This is a list of tenants shewing the fields held by each, their area and rent. It is compiled in the first instance from the field register, but is afterwards maintained independently. Fields cultivated by a proprietor are entered under the proprietor's name.

The field register is not, as a rule, annually renewed in Upper India, but the other parts of the record of rights (or village papers) are yearly recast by the village accountant so as to correspond with the actual facts of proprietorship and tenancy.

TEMPORARY SETTLEMENTS IN ASSAM AND BENGAL.

It remains only to notice briefly the temporary settlements in Assam and Bengal, and the system of settlement now about to be imposed on British Burma.

Assam is under a settlement which may be called ryotwari, though differing in certain points from the ryotwari settlements of Southern India. No accurate field survey has ever been made, and the revenue-roll is recast annually on rough measurements of holdings made by the village officials. There are only three classes of land, and the revenue-rates on these have been fixed by custom not by any process of assessment. In the exceptional circumstances of the province, with its abundant land and scanty population, they resemble rather a tax on agricultural labour than rent paid for the possession of land. The peculiarities of Assam settlements were fully discussed in a correspondence with the

share. The data of calculation were the village accounts, supplemented by the Settlement Officer's personal inquiries. At the lapse of the settlement in 1868, it was decided to renew it without revision, in consequence of the losses

Chittagong. by famine in 1866-67. Assessments in Chittagong were made by the

simple process of applying a single revenue-rate to all lands, with such modifications, however, as circumstances called for. The revenue-rate was an empirical one, and the land was assessed by plots, according to actual possession at the time of settlement. In the recent settlement of

Khurdah. the Khurdah estate, the method of estimating produce has been adopted,

and the revenue-rates represent one-fourth* of the money-value of the gross produce of an acre of each class of land. The assessments, once fixed, will remain invariable throughout the term of settlement.

BRITISH BURMA SETTLEMENT.

The settlement operations now in progress in British Burma possess a peculiar interest, as being a kind of compromise between the method of the North-Western Provinces and the methods of Southern India. The cadastral survey determines the area of every field, and the Settlement Officer, as in Southern India, will apply a revenue-rate to every field, according to the class of soil. The revenue-rates will be obtained by the Madras method of grain-values, after deducting not only the cost of cultivation, but also the cost of living. The settlement will be made with ryots holding directly from the State, and the revenue-roll will be subject to annual revision as in Madras and Bombay. On the other hand, the important process of soil-classification will be conducted chiefly on North-West principles. The Settlement Officer is to begin by classifying tracts, according to broad and marked differences arising out of

paratively few, based on the primary distinction between clay, loam, and sand. The settlement is under the management of an officer from the North-Western Provinces, and as the latest-born of Indian settlements, it enjoys all the advantages of an elective system.

TERM OF SETTLEMENT.

The term for which a temporary settlement of land-revenue in British India is usually guaranteed is 30 years. Where the district is in a backward and undeveloped state, a shorter term is fixed, commonly 20 years. In Sindh the term is only 10 years, but the circumstances of that province are exceptional. At the end of the term, whatever its duration, the settlement of the district is open to revision.

PART XXIV.

Stamps.

ACT I OF 1879.

An Act to consolidate and amend the law relating to

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Stamp Act, 1879 :"

Local extent.

It extends to the whole of British India.

Commencement.

And it shall come into force on the first day of April, 1879.

Repeal of enactments.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made under this Act. And all references made to the General

Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

‘Banker.’ (1.) ‘Banker’ includes a bank and any person acting as a banker :

‘Bill of exchange.’ (2.) ‘Bill of exchange’ includes a hundi :

‘Bill of lading.’ (3.) ‘Bill of lading’ means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated :

‘Bond.’ (4.) ‘Bond’ means—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(c) any instrument so attested whereby a person obliges himself to deliver grain or another agricultural produce to another :

‘Chargeable.’ (5.) ‘Chargeable’ means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or where several persons executed the instrument at different times, first executed :

‘Cheque.’ (6.) ‘Cheque’ means a bill of exchange drawn on a banker and payable on demand :

‘Chief controlling Revenue-Authority.’ (7.) ‘Chief controlling Revenue-Authority’ means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue : in the Presidency of Bombay, outside

Sind and the limits of the town of Bombay, a Revenue Commissioner: in Sind, the Commissioner: in the Panjab, the Financial Commissioner; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

(8.) 'Collector' means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

(9.) 'Conveyance' means any instrument by which property (whether moveable or immoveable) is transferred on sale:

(10.) 'Duly stamped,' as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

(11.) 'Instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-Authority:

(12.) 'Lease' means a lease of immoveable property, and includes also

(a) a patta,

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(c) any instrument by which tolls of any description are let, and

(d) any writing on an application for a lease intended to signify that the application is granted:

A tabular statement, to which the tenants affixed their signatures, and which contains the year and date, the name of the tenant, the number of the holding, and the amount of rent for the several years, disbursements, and balance due, is not a lease, and does not require to be stamped or registered.—I. L. R., 3 Cal., 322; and 6 C. L. R., 286.

(13.) 'Mortgage-deed' includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property :

'Mortgage-deed.'

(14.) 'Paper' includes vellum, parchment or any other material on which an instrument may be written :

'Paper.'

(15.) 'Policy of insurance' means any instrument by which one person in consideration of a premium engages to indemnify another against loss, damage or liability arising from an unknown or contingent event :

'Policy of insurance.'

It includes a life-policy :

(16.) 'Power-of-attorney' means any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it :

'Power-of-attorney.'

If a pleader is authorized by the *rakulutnama* under which he acts to receive moneys or documents for his client in the course of the cause which he is empowered to conduct, or as a consequence of the decree or any order of the Court in such cause, a Court of Justice might legally and with propriety direct a public officer to pay money or make over valuable documents to the pleader, provided that such money or documents have become receivable by the client in the ordinary course of the suit, or in consequence of the order or decree. A general or special power-of-attorney to enable the pleader to receive such money or documents is not necessary.—3 C. L. R. 13.

(17.) 'Receipt' means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person :

'Receipt.'

It has been ruled by the Calcutta High Court that a memorandum purporting that a sum of money has been received by a bank from a person other than a constituent of such bank, to be credited to a constituent's account, and furnished by the bank for transmission to such constituent, is not a receipt or discharge given for or upon payment of money in satisfaction of a debt.

‘Schedule.’ (18.) ‘Schedule’ means a schedule to this Act annexed :

(19.) ‘Settlement’ means any non-testamentary disposition in writing of moveable or
‘Settlement.’ immoveable property, made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or

(c) for any religious or charitable purpose :

It includes an agreement in writing to make such a disposition :

(20.) ‘Vessel’ means anything made for the convey-
‘Vessel.’ ance by water of human beings or property :

(21.) ‘Written’ and ‘writing’ include every mode in
‘Written,’ ‘writing.’ which words or figures can be expressed upon paper.

4. The schedules and every thing therein contained
Schedules to be read shall be read and construed as part of
as part of Act. this Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

5. Subject to the exemptions contained in the second
Instruments charge- shall be chargeable with duty of the
able with duty. amount indicated in the first schedule
as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April 1879 ;

(b) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(c) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are used in single transactions. employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

The first clause of sec. 7 of Act I of 1879 relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one.—10 C. L. R., 33.

Power to reduce or remit duty.

8. The Governor General in Council may, by order published in the *Gazette of India*,

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favor of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) cancel or vary such order to the extent of the powers hereby given.

3.—*Of Stamps and the mode of using them.*

9. Except as otherwise expressly provided in this Act, Duties how to be paid. all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or

(b) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.

Use of adhesive stamps. 10. The following instruments may be stamped with adhesive stamps, namely:—

(a) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, cheques and promissory notes drawn or made out of British India;

(c) entry as an advocate, vakil or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares of public Companies and Associations.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again,

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp, shall be stamped with impressed stamps are to be written. written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidence thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

14. Every instrument written in contravention of section twelve or thirteen shall be deemed to be unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

C.—Of the Time of stamping Instruments.

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques and notes executed out of British India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Bills, cheques and notes drawn out of British India.

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be

Conversion of amount expressed in certain currencies.

calculated on the value of such money in the currency of British India according to the following scale:—

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem*

Conversion of amount expressed in other foreign currencies. duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated

on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

21. Where an instrument is chargeable with *ad valorem*

Stock and marketable securities how to be valued. duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of

such stock or security according to the average price thereof on the day of the date of the instrument.

22. Where an instrument contains a statement of cur-

Effect of statement of rate of exchange or average price. rent rate of exchange, or average price, as the case may require, and is stamped in accordance with such state-

ment, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Where interest is expressly made payable by the

Instruments reserving interest. terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it

would have been chargeable had no mention of interest been made therein.

24. Where any property is transferred to any person in

How transfer in consideration of debt, or subject to future payment, &c., to be charged. consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting

a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

(a) Where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount, which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (a.) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different

Valuation in case of annuity, &c.

Stamp where value of subject-matter is indeterminate.

Facts affecting duty to be set forth in instrument.

Direction as to duty in case of certain con-

instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b.) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(c.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(d.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(e.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accord-

ingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller : or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the
 Duties by whom payable. expense of providing the proper stamp shall be borne—

(a) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57, and 60 (a) and (b) of the first schedule—by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance—by the insured :

(c) in the case of a conveyance—by the grantee : in the case of a lease or agreement to lease by the lessee or intended lessee ;

(d) in the case of a counterpart of a lease—by the lessor :

(e) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution or an order passed by a Revenue-Authority, in such proportion as such Authority directs :

(f) in the case of an instrument of exchange—by the parties in equal shares ; and

(g) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not,
 Adjudication as to proper stamp. is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Col-

lector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable :

And may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Collector may call for abstract and evidence.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable ; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Proviso.

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty, and

Certificate by Collector.

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped,

or not chargeable with duty, as the case may be ; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be) ;

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India ; or

any instrument chargeable with the duty of one anna or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

32. Every payment of a fee under section thirty shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

Payment of fees under section 30 how made.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. Every person having by law or consent of parties authority to receive evidence, and

Examination and impounding of instruments.

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under Chapter forty or Chapter forty-one of the Code of Criminal Procedure, or Chapter eighteen of the Presidency Magistrates Act :

Provided also, that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may, from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Instruments not duly stamped inadmissible in evidence, &c.

Proviso.

Provided that—

1st.—Any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

Instruments admissible on payment of duty and penalty.

2nd.—Nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under Chapter forty or Chapter forty-one of the Code of Criminal Procedure, or Chapter eighteen of the Presidency Magistrates Act.

And in certain criminal proceedings.

3rd.—When an instrument has been admitted in evidence, such admission shall not, except as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument not to be questioned.

The only question for the Court is whether a document tendered in evidence bears a proper stamp at the time when it is tendered. The Court is not bound, nor is it at liberty, to allow the parties to go into evidence to show at what time the document was stamped.—9 C. L. R., 272.

An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of s. 34 apply, unless the amount of duty and prescribed penalty was tendered when the document was first offered in evidence and rejected.—I. L. R., 4 Calc., 213. See also 7 W. R., 439.

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure:—

Collector's power to stamp instruments impounded.

(a.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall, upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(b.) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (a) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one auna only, or to a bill of exchange or promissory note.

The procedure laid down in this section is imperative. Where it had not been followed, a conviction under s. 61 was upset by the High Court as bad in law. The High Court remarked that, had the penalty been "required," there was no reason to suppose it would not have been paid; and had it been paid, no criminal prosecution could have been instituted, unless it appeared to the Collector that there had been an intention of evading the proper duty. The Stamp Act is a fiscal enactment, and must be strictly construed: and before any person can be punished for an offence relating to the stamp revenue, the procedure prescribed by the Act must be strictly followed. "If," said Lord Mansfield in *Hartley v. Hooker*, "a new offence is created by statute, and a special jurisdiction out of the course of the common law is prescribed, it must be followed. If not strictly pursued, all is a nullity and *coram non judice*."—I. L. R., 8 Calc., 259.

In this case six persons acted as arbitrators in a dispute between two of their fellow villagers, and delivered their award in writing. The award was filed in evidence before a Munsiff, who impounded it, and sent it to the Collector. The six arbitrators were summoned and fined Rs. 25 each.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

Prosecution for offence against stamp-law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section thirty-four or thirty seven, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Copy may be made of instruments so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section thirty, section thirty-seven or section thirty-eight Procedure where Collector feels doubt as to duty chargeable. feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

46. The Chief Controlling Revenue-Authority may state any case referred to it under section Reference by Revenue-Authority to High Court. to forty-five or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor

of the Panjab—to the Chief Court of the Panjab: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

Under the provisions of the Stamp Act, 1879, the duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution of the document, but the penalty leviable is determined in all cases by section 37 (*b*) of the Stamp Act 1879.—I. L. R., 5 Mad., 39

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded: and it shall send to the Revenue-Authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

49. If any Court other than a Court mentioned in section forty-six feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section thirty-four, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its

judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue

Revision of certain decisions of Courts regarding the sufficiency of stamps.

jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person guilty of any offence against the stamp-law which the Collector considers him to have committed in respect of any instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) paid for according to the determination of such Court was paid to the Governor.

respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty :

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

51. Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

(a.) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person :

(b.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon :

(c.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the

same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or being a promissory note may have been delivered to the payee; provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note.

(d.) The stamp used for any of the following instruments, that is to say—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed:

(4) an instrument executed by any party thereto, which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) an instrument executed by any party thereto, which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by an party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument—

(a) such instrument is given up to be cancelled:

(b) the application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India.

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provisions of section twelve, the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (a) other stamps of the same description and value, or, (b) if required, and he thinks fit, stamps of any other description to the same amount in value, or, (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for mis-used stamps.

Allowance under sections 51 and 52 how to be made.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

Allowance for stamps not required for use.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Powers to make rules relating to sale of stamps.

56. The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Powers to make rules generally to carry out Act.

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Certain powers exercisable from time to time.

All rules made under this Act other than rules made under section fifty-five, shall be published in the *Gazette of India*, and all rules made under section fifty-five shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Publication of rules.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing or transferring or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

Penalty for executing, &c., instrument not duly stamped.

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be

allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Held, that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s. 29, Act XVIII of 1869, had any intention to defraud by evading payment of stamp-duty.—I. L. R., 2 Calc., 399.

But the judgment of the Court goes on to state that the Magistrate is bound to record a conviction, provided it is proved that there has been a making, &c., of an unstamped or insufficiently stamped instrument, and that the amount of the fine only is left entirely to his discretion.

There are many offences irrespective of intention. See Maxwell on Statutes. p. 80, *c. g.* :—offences under Cotton Frauds Act in Bombay, under Game Laws in England. Laws for the protection of the revenue are intentionally strict. *c. g.* :—Salt, Excise, Opium, and Post Office Laws. Under s. 61 of Act VII of 1878 (B.C.), a person who is found in possession of any greater quantity of any excisable article than he is allowed to possess under the law is liable to a fine of Rs. 100. It would be no answer to a prosecution for such person to state that he had no intention to break the law. *Ignorantia legis neminem excusat.*

62. Any person required by section eleven to cancel an adhesive stamp, and failing to cancel such stamp, in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

63 Any person who, with intent to defraud the Government of any duty,

(a) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly, to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section fifty-eight to give a receipt, refuses or neglects to give the same, or who with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for refusal to give receipt, and for device to evade duty on receipts.

65. Every person who

(a) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for,

Penalty for not making out policy,

such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

(b) makes, executes or delivers out any policy which is

or making, &c., any policy not duly stamped.

not duly stamped, or pays or allows in account, or agrees to pay or allow in

account, any money upon, or in respect of, any such policy, shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on

paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

67. Whoever, with intent to defraud the Government

Penalty for post-dating bills, &c. ;

of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on

which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ;

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment

for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

The Chief Controlling Revenue-Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.—(See section 5.)

1.—ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession—*One anna*.

“Acknowledgment.” An account in a *hatchitta*, showing advances of money made to, and part-payment made by, the defendant, the whole amount being in the hand-writing of, and signed by, the defendant, is admissible in evidence without being stamped.—I. L. R., 4 Cal., 885, followed. I. L. R., 9 Cal., 127.

2.—ADMINISTRATION - BOND — The same duty as a *Security-Bond* (No. 14).

ADOPTION-DEED—See *Instrument* (No. 38).

3.—AFFIDAVIT or Declaration in writing on oath or affirmation made before a person authorized by law to administer oath—*One rupee*.

See *Exemptions, Schedule II* (No. 1).

4.—AGREEMENT TO LEASE—The same duty as a *Lease* (No. 39).

5.—AGREEMENT or MEMORANDUM OF AN AGREEMENT—

(a.) If relating to the sale of any Government security, share in a Company or Association, or Bill-of-Exchange—*One anna*.

(b.) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished—*Four annas*.

(c.) If not otherwise provided for by this Act—*Eight annas*.

See *Exemptions, Schedule II* (No. 2).

6.—APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a will—*Fifteen rupees*.

7.—APPRAISEMENT or Valuation made otherwise than under an order of the Court in the course of a suit—The same duty as an *Award* (No. 10).

See *Exemptions, Schedule II* (Nos. 3 and 4).

APPRENTICESHIP-DEED—See *Instrument* (No. 31).

8.—ARTICLES OF ASSOCIATION OF A COMPANY—*Twenty-five rupees*.

9.—ARTICLES OF CLERKSHIP or Contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court—*Two hundred and fifty rupees*.

ASSIGNMENT—See *Conveyance* (No. 21) and *Transfer* (No. 60).

AUTHORITY TO ADOPT—See *Instrument* (No. 38).

10.—AWARD, that is so say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit—

(a.) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000—The same duty as a *Bond* (No. 13) for such amount.

(b.) In any other case—*Five rupees*.

See *Exemptions, Schedule II* (No. 6).

11.—BILL-OF-EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency note—

(a.) When payable on demand and the amount exceeds Rs. 20—*One anna*.

(b.) When payable otherwise than on demand, but not more than one year after date or sight—

	If drawn singly.			If drawn in set of two, for each part of the set			If drawn in set of three, for each part of the set.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
If the amount of the bill or note does not exceed Rs. 200	0	2	0	0	1	0	0	1	0
If it exceeds] [Does not exceed									
200 400	0	4	0	0	2	0	0	2	0
400 600	0	6	0	0	3	0	0	2	0
600 1,000	0	10	0	0	5	0	0	4	0
1,000 1,200	0	12	0	0	6	0	0	4	0
1,200 1,600	1	0	0	0	8	0	0	6	0
1,600 2,500	1	8	0	0	12	0	0	8	0
For every Rs. 2,500, or part thereof in excess of Rs. 2,500, up to Rs. 10,000	1	8	0	0	12	0	0	8	0
For every Rs. 5,000, or part thereof in excess of Rs. 10,000, up to Rs. 30,000	3	0	0	1	8	0	1	0	0
And for every Rs. 10,000, or part thereof in excess of Rs. 30,000.	6	0	0	3	0	0	2	0	0

(c.) When payable at more than one year after date or sight—The same duty as a *Bond* (No. 13) for the amount of such bill or note.

12.—BILL-OF-LADING—*Four annas*.

If a Bill-of-Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.

See *Exemptions, Schedule II* (No. 7).

13.—BOND (not otherwise provided for by this Act)—

When the amount or value secured does not exceed Rs. 10—*Two annas*.

When such amount or value exceeds Rs. 10, but does not exceed Rs. 50—*Four annas*.

When such amount or value exceeds Rs. 50, but does not exceed Rs. 100—*Eight annas*.

And for every Rs. 100 or part thereof in excess of Rs. 100, up to Rs. 1,000—*Eight annas*.

And for every Rs. 500 or part thereof in excess of Rs. 1,000—*Two rupees eight annas*.

See *Administration-Bond* (No. 2), *Customs - Bond* (No. 24), *Indemnity-Bond* (No. 28), and *Security-Bond* (No. 14).

See *Exemptions, Schedule II* (No. 8).

14.—BOND or MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof—

(a.) When the amount secured does not exceed Rs. 1,000—The same duty as a *Bond* (No. 13).

(b.) In any other case—*Five rupees*.

See *Exemptions, Schedule II* (Nos. 8 and 12).

15.—BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage—The same duty as a *Bond* (No. 13).

16.—CERTIFICATE OF SALE granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount of the purchase-money.

17.—CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association—*One anna*.

18.—CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) where-

by a vessel or some specified principal part thereof is let for specified purpose of the charterer—*One rupee.*

19.—CHEQUE, for an amount exceeding twenty rupees—*One anna.*

20.—COMPOSITION-DEED, that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors—*Ten rupees.*

21.—CONVEYANCE, not being a TRANSFER mentioned in No. 60 :—

When the amount of the consideration for such conveyance as set forth therein does not exceed Rs. 50—*Eight annas.*

When it exceeds Rs. 50, but does not exceed Rs. 100—*One rupee.*

For every Rs. 100 or part thereof in excess of Rs. 100, up to Rs. 1,000—*One rupee.*

and for every Rs. 500 or part thereof in excess of Rs. 1,000—*Five rupees.*

See *Exemptions, Schedule II (Nos. 5 and 17).*

CO-PARTNERSHIP—See *Instrument (No. 32).*

22.—COPY OR EXTRACT, certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—

(a.) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee—*Eight annas.*

(b.) In any other case—*One rupee.*

See *Exemptions, Schedule II (Nos. 9 and 10).*

23.—COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid—

(a.) If the duty with which the original instrument is chargeable does not exceed one rupee—The same duty as is payable on the *original.*

(b.) In any other case. *One rupee,*

24.—CUSTOMS-BOND—The same duty as a *Security-Bond* (No. 14).

25.—DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will—*Fifteen rupees*.

26.—DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees—*One anna*.

DEPOSIT OF TITLE-DEEDS—See *Instrument* (No. 29).

DISSOLUTION OF PARTNERSHIP—See *Instrument* (No. 33).

DUPLICATE—See *Counterpart* (No. 23).

27.—ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent—

In the case of an Advocate or Vakil—*Five hundred rupees*.

In the case of an Attorney—*Two hundred and fifty rupees*.

See *Exemptions, Schedule II* (No. 11).

EXCHANGE—See *Instrument* (No. 35).

EXTRACT—See *Copy* (No. 22).

FURTHER CHARGE—See *Instrument* (No. 30).

GIFT—See *Instrument* (No. 36).

28.—INDEMNITY-BOND—The same duty as a *Security-Bond* (No. 14).

INSPECTORSHIP-DEED—See *Composition Deed* (No. 20).

29.—INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property—

(a.) When such loan is repayable more than three months, but not more than one year, from the date of such

instrument—The same duty as a *Bill-of-Exchange* [No. 11 (b)] for the amount secured.

(b.) When such loan is repayable not more than three months from the date of such instrument—Half the duty payable on a *Bill-of-Exchange* [No. 11 (b)] for the amount secured.

30.—INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGE PROPERTY—

(a.) When the original mortgage is one of the description referred to in No. 44, clause (a) of this schedule—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount secured by such instrument.

(b.) When such mortgage is one of the description referred to in No. 44, clause (b) of this schedule—The same duty as a *Bond* (No. 13) for the amount secured by such instrument.

31.—INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)—*Five rupees*.

See *Exemption, Schedule II* [No. 12 (c)].

32.—INSTRUMENT OF CO-PARTNERSHIP—*Ten rupees*.

33.—INSTRUMENT OF DISSOLUTION OF PARTNERSHIP—*Five rupees*.

34.—INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage—*One rupee*.

35.—INSTRUMENT OF EXCHANGE of any property—The same duty as a *Conveyance* (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.

36.—INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)—The same duty as a *Conveyance* (No. 21) for a consideration equal to the value of the property as set forth in such instrument.

37. INSTRUMENT OF PARTITION—The same duty as a *Bond* (No. 13) for the amount of the value of the property divided as set forth in such instrument.

38.—INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT—
Ten rupees.

INSURANCE—See *Policy* (No. 49).

39.—LEASE—

(a) Where by such lease the rent is fixed and no premium is paid or delivered, and such lease purports to be for a term—

of less than one year—The same duty as a *Bond* (No. 13) for the whole amount payable or delivered under such lease;

of not less than one year, but not more than three years—The same duty as a *Bond* (No. 13) for the average annual rent reserved;

exceeding three years—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.

(b.) Where by such lease the rent is fixed and no premium is paid or delivered, and such lease does not purport to be for any definite term—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

(c.) Where the lease is granted for a fine or premium, and where no rent is reserved—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.

(d.) Where the lease is granted for a fine or premium in addition to rent reserved—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered:

Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed *eight annas*.

See *Agreement to lease* (No. 4).

See *Exemptions, Schedule II* (No. 13).

40.—LETTER OF ALLOTMENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company—*One anna*.

41.—LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn—*One anna*.

42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion—*Ten rupees*.

43.—MEMORANDUM OF ASSOCIATION OF A COMPANY—*Fifteen rupees*.

44.—MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29, or No. 55 of this schedule—

(a.) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given—The same duty as a *Conveyance* (No. 21) for a consideration equal to the amount secured by such deed.

(b.) When at the time of execution possession is not given or agreed to be given as aforesaid—The same duty as a *Bond* (No. 13) for the amount secured by such deed.

See *Exemptions, Schedule II* [No. 12 and No. 14 (b)].

45.—NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public—*One rupee*.

46.—NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees—*One anna*.

47.—NOTE OF PROTEST BY THE MASTER OF A SHIP—*Eight annas*.

PARTITION—See *Instrument* (No. 37).

PARTNERSHIP—See *Instrument* (Nos. 32 and 33).

48.—PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India—*One hundred rupees.*

49. POLICY OF INSURANCE—

	If drawn singly.	If drawn in duplicate, for each part.
	Rs. As. P.	Rs. As. P.
(a.) In case of Sea insurance—		
When the amount insured does not exceed Rs. 1,000 ..	0 4 0	0 2 0
And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000 ...	0 4 0	0 2 0
(b.) In the case of any other insurance—		
When the amount insured does not exceed Rs. 1,000 ...	0 6 0	0 3 0
And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000 ...	0 6 0	0 3 0

See *Exemptions, Schedule II* [No. 14 (a)].

50.—POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51.

(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to single transaction—*Eight annas.*

(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a)—*One rupee.*

(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally—*Five rupees.*

(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally—*Ten rupees.*

(e.) In any other case—*One rupee* for each person authorized.

Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.

PROMISSORY NOTE—See *Bill-of-Exchange* (No. 11).

PROTEST, that is to say, any declaration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a bill-of-exchange or promissory note.

See *Notarial Act* (No. 45).

PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by Notary Public or other person lawfully acting as such.

See *Notarial Act* (No. 45).

51.—PROXY empowering any person to vote at any one meeting of—

(a.) Members of a Company whose stock or funds is or are divided into shares and transferable—*One anna*.

(b.) Municipal Commissioners—*One anna*.

(c.) Proprietors, Members, or Contributors to the funds of any Institution—*One anna*.

52.—RECEIPT FOR ANY MONEY OR OTHER PROPERTY, the amount or value of which exceeds Twenty Rupees—*One anna*.

See *Exemptions, Schedule II* (No. 15).

53.—RE-CONVEYANCE OF MORTGAGED PROPERTY—

(a.) If the consideration for which the property was mortgaged does not exceed rupees 1,000—The same duty as a *Conveyance* (No. 21) for the amount of such consideration as set forth in the re-conveyance.

(b.) In any other case—*Ten rupees*.

54.—RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property—

(a.) If the amount or value of the claim does not exceed rupees 1,000—The same duty as a *Bond* (No. 13) for such amount or value as set forth in the release.

(b.) In any other case—*Five rupees*.

55.—RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board

a ship and making repayment contingent on the arrival of the cargo at the port of destination—The same duty as a *Bond* (No. 13).

56.—REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a will—*Ten rupees*.

57.—SETTLEMENT—The same duty as a *Bond* (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.

58.—SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel—*One anna*.

SPECIFICATION—See *Petition* (No. 48).

59.—SURRENDER OF LEASE.—

(a.) When the duty with which the lease is chargeable does not exceed five rupees—The duty with which such lease is chargeable.

(b.) In any other case—*Five rupees*.

See *Exemptions, Schedule II* (No. 16).

60.—TRANSFER—

(a.) Of shares in a Company or Association—*One quarter* of the duty payable on a *Conveyance* (No. 21).

(b.) Of any interest secured by a Bond, Lease, Mortgage-Deed, or Policy of Insurance—

1. If the duty on such Bond, Lease, Mortgage-Deed or Policy does not exceed five rupees—The duty with which such *Bond, Lease, Mortgage-Deed* or *Policy of Insurance* is chargeable.

2. In any other case—*Five rupees*.

(c.) Of any property under the Administrator-General's Act, 1874, section 31—*Ten rupees*.

(d.) Of any trust-property from one trustee to another trustee without consideration—*Five rupees*.

See *Exemptions, Schedule II* (No. 17).

TRUST.—See *Declaration* (No. 25) and *Revocation* (No. 56).

VALUATION.—See *Appraisement* (No. 7).

61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any

goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be—*Four annas.*

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. AFFIDAVIT or DECLARATION in writing when made—
 - (a) as a condition of enlistment under the Indian Articles of War ;
 - (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or
 - (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. AGREEMENT or MEMORANDUM OF AGREEMENT—
 - (a) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of Schedule I ;
 - (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner ;
 - (c) made by raiyats for the cultivation of the poppy for Government ;
 - (d) made in the form of tenders to the Government of India for or relating to any loan ;
 - (e) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865 ;
 - (f) made under the European Vagrancy Act, 1874, section 17.
3. APPRAISEMENT OR VALUATION made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. APPRAISEMENT OF CROPS for the purpose of ascertaining the amount to be given to a landlord as rent.
5. ASSIGNMENT OF COPYRIGHT by entry made under Act No. XX of 1847, section 5.

6. AWARD under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.

7. BILL-OF-LADING when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

8. BOND when executed by—

(a) the sureties of middlemen (lambardars or khatadars) taking advances for the cultivation of the poppy for Government ;

(b) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act ;

(c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

9. COPY OF ANY PAPER which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

10. COPY OF REGISTRATION of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.

11. ENTRY—

(a) of an advocate, vakil or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter ;

(b) on the roll of any High Court, as an attorney of an articulated clerk bound as such before this Act comes in force.

12. INSTRUMENTS—

(a) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances ;

(b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof ;

(c) of apprenticeship executed by a Magistrate under Act XIX of 1850, or by which a person is apprenticed by or at the charge of any public charity.

13. LEASES AND COUNTERPARTS—

(a) Leases of fisheries granted under the Burma Fisheries Act, 1875 ;

(b) Lease executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees ;

(c) Counterpart of any lease granted to a cultivator.

LETTER—

x) of cover or engagement to issue a policy of insurance :

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned ;

(b) of hypothecation accompanying a bill-of-exchange.

15. RECEIPTS—

(a) endorsed on or contained in any instrument duly stamped or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured ;

(b) for any payment of money without consideration ;

(c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inam lands ;

(d) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity ;

(e) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ;

(f) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;

(g) given by a headman or lambardar for land-revenue or taxes collected by him ;

(h) given for money or securities for money deposited in the hands of any banker, to be accounted for :

Provided the same be not expressed to be received of, or by the, hands of any other than the person to whom the same is to be accounted for ;

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. SURRENDER OF LEASE when such lease is exempted from duty.

17. TRANSFER by endorsement—

(a) of a bill-of-exchange, cheque or promissory note ;

(b) of a bill-of-lading ;

(c) of a policy of insurance ;

(d) of mortgages of rates and taxes authorized by any Act for the time being in force in British India ;

(e) of securities of the Government of India ;

(f) of a warrant for goods (No. 61 of Schedule I).

General Exemptions.

18. ANY INSTRUMENT executed by, or on behalf of or in favor of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright ...	In section five, the words "without being subject to any stamp or duty."
X of 1866 ...	The Indian Companies Act.	In section eleven, the words "shall bear the same stamp as if it were a deed, and." In section sixteen, the words "they shall bear the same stamp as if they were contained in a deed."

SCHEDULE III.—(Continued.)

Number and year.	Subject or short title.	Extent of repeal.
XVIII of 1869 ...	The General Stamp Act.	The whole.
VII of 1871 ...	The Indian Emigration Act.	In section twenty-seven and twenty-nine. the words " which shall not require a stamp."
XIX of 1873 ...	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, words " stamp or."
II of 1874 ...	The Administrator-General's Act.	In section thirty-one the words " bearing a stamp of ten rupees and."
IX of 1874 ...	The European Vagrancy Act.	In section seventeen, the words " may be on unstamped paper and."
XV of 1876 ...	Bombay Municipal Debentures.	In section two, the words " and no such indorsement shall be chargeable with any stamp-duty."

PART XXV.

Survey.

ACT No. V OF 1875 (B.C.)

(As amended by Act VII of 1880, B.C.)

An Act to provide for the Survey and Demarcation of Land.

WHEREAS it is expedient, with a view to the definition and identification of lands, the better security of landed property, and the prevention of encroachments and disputes, to provide

Preamble.

for the survey of lands and for the establishment and maintenance of marks to distinguish boundaries : it is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called “The Bengal Survey Act, 1875,” and shall come into force from the date on which it may be published with the assent of the Governor General.

Commencement.

Local extent.

It extends to the territories for the time being subject to the Lieutenant-Governor of Bengal.

Interpretation clauses.

2. In this Act—unless there be something repugnant in the subject or context—

‘Collector’ means every Collector of a district, and includes every officer either generally or specially vested with powers of a

Collector for the purposes of this Act.

‘Deputy Collector’ includes any Deputy Collector to whom the Collector or Superintendent of Survey may delegate any of his functions under this Act.

‘Estate.’

‘Estate’ means—

any land which is entered on the revenue-roll as separately assessed with the public revenue ;

any land acquired from the Government under one title, which is liable to pay land-revenue at any future time ;

any chur or island thrown up in a navigable river or in the sea which, under the laws in force, is at the disposal of the Government ;

any land which is entered on the Collector’s registers as a separate holding, free in perpetuity from liability to pay land-revenue.

Any land gained by alluvion or by dereliction of a river or of the sea to any estate as here defined, which, under the laws in force, is considered an increment to the tenure to which such land has accreted, shall be deemed a part of such estate.

‘ Mouzah ’ includes every village, hamlet, tolah, and similar subdivision of an estate, pergunnah, or village by whatever name such subdivision may be known.

‘ Occupant ’ includes every zemindar, tenure-holder, farmer, and other person entitled to receive rents in respect of land, or holding land on a claim that he is so entitled, and every ryot in occupation of land.

‘ Section ’ means a section of this Act.

‘ Survey ’ includes identification of boundaries, and all other operations antecedent to and connected with survey.

‘ Tenure ’ includes all permanent interests in land, with the exception of estates as above defined, and with the exception of those of ryot having a right of occupancy only ; it also includes all ghatwalee holdings.

‘ Tenure-holder ’ means all or any of the holders of a tenure.

‘ Zemindar ’ means all or any of the holders of an estate.

PART

OF THE SURVEY.

3. The Lieutenant-Governor may, whenever he shall think fit, order that a survey shall

district, or in any part of a district, or in any specified tract of country, and that the boundaries of estates, tenures, mouzahs, or fields be demarcated on the lands so to be surveyed.

Provided that, in any district of which a survey may have been completed and approved by the Government, it shall not be lawful for the Lieutenant-Governor to order a new survey of lands on the banks of rivers or on the seashore to be made for the purposes described in Act IX of 1847 (*an Act regarding the assessment of land gained from the sea or from rivers by alluvion or dereliction*).

tion within the Provinces of Bengal, Behar, and
until ten years shall have expired from the completion
and approval of any such previous survey.

See notes under s. 1 of Act IX of 1847.

4. For the purpose of carrying out any survey directed
Lieutenant-Governor to be made under the last preceding
may appoint Superintendent of Survey. section, or for any or all of the pur-
poses of this Act,

the Lieutenant-Governor may appoint a Superintendent
of Survey, who may exercise all or any of the powers of
a Collector under this Act ;

and may appoint one or more Assistant Superintendents
and Deputy Collectors, who shall exercise all the powers
of a Collector in respect to such matters under this Act
as may be delegated to such Assistant Superintendents or
Deputy Collectors respectively by the Collector or Superin-
tendent of Survey, and not otherwise :

Provided that, notwithstanding the appointment of a
Superintendent of Survey for any tract of country, it
shall be competent to the Board of Revenue to direct
that the Collector shall perform any duties under the
Act within the said tract.

5. Before entering on any lands for the purpose of a
Collector to publish a survey, the Collector shall cause to be
proclamation before en- published a proclamation addressed
tering on lands. to the occupants of the lands which
are about to be surveyed, and of the conterminous lands,
and to all persons employed on, or connected with the
management of, or otherwise interested in such lands,
calling upon them to attend, either personally or by agent,
before the Collector or any officer authorized by the
Collector in that behalf, at such places and at such times
as shall be stated in such proclamation, during the de-
marcation and survey of the land, for the purpose of
pointing out the boundaries and of rendering such aid as
may be necessary in setting up or repairing such boundary-
marks as may be required, and of affording such assist-
ance and information as may be needed for the purposes
of this Act.

Such proclamation shall be published by posting a copy
thereof

at the Court of the Judge and at the office of the

Collector of every district within which any portion of the lands about to be surveyed may be known to be situated ;

at every subdivisional office, police station, moonsiff's court, and sub-registrar's office within the jurisdiction of which any portion of the land about to be surveyed may be known to be situated ;

at one or more mal cutcherries on each estate ; and at such other place or places as to the Collector may seem fit.

6. After issue of a proclamation as aforesaid, the Collector and any persons acting under his authority may enter upon such lands, and do all things and make all enquiries necessary for effecting the survey and demarcation of the boundaries thereof.

7. The Collector may also, by a special notice, require any such person to attend before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than fifteen days after the service of the notice, at any places, for any of the purposes aforesaid ; and every person on whom such special notice may be served shall be legally bound to attend as required by the notice, and to do any of the things mentioned in section five, and to give any information which may be required, so far as he may be able to give it.

8. When any materials or labor shall have been supplied for any of the purposes mentioned in section five, the Collector or other officer making a requisition under that section shall forthwith cause the price of such materials or labor to be paid to the person by whom the same were supplied.

9. The Collector, or other survey officer authorized by the Collector in that behalf, may, by a special notice, require any occupant to clear any boundary or other line which it may be necessary to clear for the purposes of the survey, by cutting down and removing any trees, jungle, fences, or standing crops.

10. If any demand for compensation be made in respect of the clearance of any line in accordance with a requisition under the

Collector may enter upon land.

Collector may serve special notice.

Collector to pay the price of materials or labor supplied.

Collector may require occupants to clear boundary lines.

Compensation.

last preceding section, the Collector shall ascertain and record the nature and estimated value of any trees, jungle, fences, or standing crops which may have been cut down or removed, and shall offer adequate compensation to the owners thereof, together with payment for all expenses incurred in carrying out the said requisition.

11. When the demarcation of a village or other convenient tract has been completed, the ameen or survey officer shall, before sending in to the Collector the maps and papers relating thereto, by a general notice, in which the names of all persons required to appear shall be specified, and which shall be posted up at a convenient place in the village or tract, call upon all persons who have pointed out any boundaries in such village or tract on behalf of those interested to attend before him within three days of the publication of the said notice for the purpose of inspecting the maps, field-books, and similar papers in which any boundary pointed out by any such persons has been represented, and by signing such maps and papers to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them; and every person so called upon shall be legally bound to attend before such ameen or survey officer, and to inspect the papers, in accordance with such requisition.

Any person so called upon who may object to sign the maps and papers as aforesaid, shall be required to state his objections in writing, and such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

The signature affixed to any maps or papers under this section shall be in attestation of the fact that the boundaries thereon represented, or any of them, have been represented in accordance with those pointed out by the person signing; and the affixing of such signature shall not be held to prejudice the right of any person interested to make any objection to such boundaries on any other ground before the Collector under the next succeeding section.

In a suit for possession. the only evidence for the plaintiff was a thakbust map which had been signed as correct by predecessors in title

of both the plaintiff and defendant and on which the lands in dispute were laid down as the lands of the plaintiff's predecessor. *Held*, that the evidence was not sufficient to justify a decree for the plaintiff.—I. L. R., 5, Cal., 212. Still a thakbust map has often been regarded as strong evidence; see 2 W. R., 210; 10 W. R., 343; 13 W. R., 50; 19 W. R., 202.

12. On receipt in the Collector's office of the maps or

On receipt of maps, papers showing any boundaries which Collector to post noti- have been demarcated, the Collector fication in his office. shall cause a notification to be posted in his office and in such other places as he may think proper, informing all persons concerned that the maps and papers relating to the boundaries in the village or tract specified are open to inspection; and requiring any person who may have any objections to prefer, to prefer such objections within six weeks of the date of the posting of such notification, after which time the Collector will proceed finally to confirm the boundaries as laid down for the purposes of the survey.

When the Collector shall have reason to believe (either from the failure of any person interested or his representatives to sign the maps and papers on the spot when required by the survey officer to do so under the last preceding section, or for any other reason), that any zemindar or person interested is likely to object to any boundary as laid down or as represented in the said papers, the Collector shall cause a special notice requiring such zamindar or other person to attend personally or by duly authorized agent before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than one month after the service of the notice, for the purpose of signing and thereby admitting the correctness of any maps or other papers which have been prepared under this Act in respect of any boundary in which such zemindar or other person is interested, or of stating in writing the substance of any objection which he may wish to prefer against the correctness of such maps or papers; and if any person so summoned shall fail to attend and to sign the said maps or papers, or to give in a written statement of his objections within the time prescribed, the Collector may proceed finally to confirm the boundaries as represented in such maps and papers, for the purposes of the survey and of this Act.

Provided that if, within the time specified, any such duly authorized agent deposits with the Collector the necessary expenses of making copies of the said maps or papers, the Collector shall order such copies to be prepared, and as soon as they are prepared, shall cause a notice to that effect to be posted at his office, and the said agent shall be allowed such time as may be specified in such notice, not being less than fifteen days from the posting thereof, for the purpose of signing or of giving in a written statement of objections.

When a written statement of objections has been given in, as in this section provided, the Collector, after holding any further inquiry which he may deem necessary, shall pass such order in respect of such objections as to him shall seem fit; and if the objections shall seem to him not to be well founded, shall direct that all expenses of such further inquiry, and all expenses entailed on any other person by such inquiry, shall be recovered from the person who made the objection.

The value of thak maps as evidence of possession was discussed by the High Court in a late case. Field, J., said: "Thak maps are, as has been pointed out in many decisions of this Court, good evidence of possession; but the value of that evidence varies enormously. In the case of a thak map containing definite landmarks and undisputed boundaries signed by the parties or their accredited agents, and representing land which has been brought under cultivation, and is in the possession of ryots whose names are known or can be discovered from the zemindari papers, a thak map is very valuable evidence of possession. But the value of such a map is greatly diminished when we find that there are no natural landmarks delineated thereupon; that the land was jungle when measured; that the boundaries are not discoverable from a mere inspection of the map; and that neither the zemindars nor their agents have, by their signatures, admitted the correctness of the thak."—I. L. R., 8 Cal., 983.

Survey officers having no jurisdiction to inquire into questions of title, a survey map is not direct evidence of title in the same way that a decree in a disputed cause is evidence of title, but it is direct evidence of possession at the time of the survey being made.—9 C. L. R., 305.

13. Whenever any person, having failed to sign the maps and papers, or to give in his objections in writing within the time prescribed by the notification or by the special notice mentioned in the last preceding section, shall, at any time before the Col-

If agent deposits expenses of making copies, Collector shall order them to be prepared.

Procedure when objection is stated.

Person making subsequent objection may be required to deposit costs of further inquiry.

lector has finally confirmed the boundaries for the purposes of the survey, prefer any subsequent objection against the correctness of any maps or papers in respect of which such notification or notice was issued, the Collector shall require him to deposit the estimated costs of any further inquiry which it may be necessary to make in respect of his objection; and if the said person shall fail to deposit such costs within the time specified by the Collector, he shall be deemed for all purposes of this Act to have admitted the correctness of the said maps and papers. If the costs of any inquiry which may be deemed necessary be deposited, the Collector shall make such further inquiry at the expense of the person so objecting; and if the objection shall seem to the Collector not to be well founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other persons on account of such inquiry.

Provided that no person so making an objection after the prescribed time shall, under any circumstances, be entitled to recover the expenses which he is required to deposit before any further inquiry is made in respect of such subsequent objection.

PART III.

OF BOUNDARY-MARKS.

14. The Collector may cause to be erected temporary boundary-marks of such materials, and in such number and manner as he may direct, on any lands to be surveyed under this Act ;

and may require any occupant of land to maintain and keep in repair such marks, or any boundary-marks,

until any survey operations shall be concluded and a final award given as to any disputed boundary, or

until permanent boundary-marks may be erected in lieu thereof as hereinafter provided.

15. The Collector may at any time cause to be erected on any land which is to be, or which Collector may erect permanent boundary-marks. has been, surveyed under this Act, permanent boundary-marks of such materials, and in such number and manner, as he may determine to be sufficient to distinguish the boundaries of the estates, tenures, mouzahs, or fields for which the same are to be erected.

Provided that seven days before he proceeds to the erection of any permanent boundary-marks, the Collector shall, for the Specification of marks and estimate of their cost to be posted in Collector's Office. information of all concerned, cause to be posted in his office, and in the malcutcherry, or at some other convenient place on every estate concerned, a specification of the number and character of the marks which he proposes to erect on the estate and an estimate of their cost.

16. All expenses incurred by the Collector in erecting temporary or permanent boundary-marks under this Act shall, in manner Apportionment of expenses. hereinafter provided, be apportioned among, and levied from, the zemindars and tenure-holders on their estates ;

Provided that no tenure-holder shall be liable to pay any portion of the expenses incurred by the erection of boundary-marks on an estate, unless some portion of his tenure is situated within fifteen hundred feet of some such boundary-mark.

17. All lands held without payment of rent, not being entered on the Collector's register of Lands not subject to rent to be deemed to be part of a tenure. revenue-free tenures of the district, shall, for the purposes of this Act, be deemed to form a part of the tenure within the local boundaries of which they may be included ; and if they be not included within the local boundary of any tenure, then to be a part of the estate within the local boundaries of which they are included, and if they be not included within the local boundaries of any one estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal, appoint.

Provided that no rent-free holding of which the annual value is less than five rupees, shall be liable to pay any

portion of the expenses of erecting boundary-marks under this Act.

18. If any occupant on whom a requisition has been made under section fourteen, fails to maintain, or keep in repair, any temporary boundary mark, the Collector may maintain, keep in repair, or restore any such boundary mark, and the expenses thereby incurred shall be recovered as provided in section fifty-seven from the person so failing to maintain, or keep in repair, any such boundary-mark.

19. Every zemindar, tenure-holder, and farmer of land shall be legally bound to preserve, as far as lies in his power, such of the permanent boundary-marks lawfully erected on his estate, tenure, or farm, or on the boundary between his estate, tenure, or farm, and any other estate, tenure, or farm, as may be assigned to him in that respect entirely, or jointly with other persons, under the provisions of section twenty-nine, and shall give immediate notice to the Collector if any such marks are injured, destroyed, or removed, or required repairs.

20. Whenever it shall come to the notice of the Collector that any permanent boundary-mark erected under the provisions of this Act has been injured, destroyed, or removed, or requires repairs, the Collector may cause such boundary-mark to be re-erected, restored, or repaired, and may recover any expenses incurred in respect of such re-erection, restoration, or repair, in such proportions as he shall think fit, from the zemindars and tenure-holders to whom such boundary-mark may have been assigned in that respect under the provisions of section twenty-nine, and all such expenses shall be recoverable as provided in section fifty-seven.

21. Nothing contained in this Act shall be held to prohibit the Collector from causing any temporary or permanent marks to be erected, maintained, or repaired by any occupant of land, under the directions of the said Collector, and with the consent of such occupant.

The Collector shall repay to such occupant the expenses incurred in such erection or repair, and such expenses shall be apportioned and recovered as provided in Part IV.

PART IV.

OF THE APPORTIONMENT AND RECOVERY OF EXPENSES.

22. Upon the completion of the erection of boundary-marks on any tract of land of which the survey may have been ordered, or on any convenient portion thereof, the Collector shall forthwith prepare a statement of all expenses incurred in respect of such boundary-marks.

23. Such statement shall show the total number of marks of each description which have been erected on such tract or portion of such tract, the aggregate cost of erecting all the marks of each description, the names of the estates and mouzahs within, or on the boundaries of, which any marks have been erected, and the total number of marks of each description erected within or on the boundary of each estate.

24. Upon the completion of such statement, the Collector shall provisionally apportion the aggregate expenses of erecting the marks among the estates specified, with reference to the number of boundary-marks of each description which have been erected within or on the boundary of each estate.

25. So soon as the provisional apportionment shall have been made as required by the last preceding section, the Collector shall cause a notice to be served on the zemindar of every estate on which the expenses have been apportioned—

(a) specifying the sum which has been apportioned on his estate, and, as far as can be calculated, the sum which he will be required to pay on account of the service of notices on him under this section and section twenty-nine;

(b) informing him that the said statement is open to inspection in the office of the Collector;

(c) calling on him to appear in person, or by agent properly authorized, at the office of the Collector, on a date to be specified in the notice (not being less than two months after the issue of the notice), on which date the Collector will proceed to consider any objections which may be made to the provisional apportionment of expenses;

(d) warning him that if he does not appear on the date fixed in pursuance of the notice, he will be deemed to have waived all objections to the share of the expenses apportioned to his estate;

and (unless as otherwise hereinafter provided in sections thirty-one, thirty-two, and thirty-three)

(e) informing him that under this Act he is entitled to recover a portion of the amount which shall be finally made payable in respect of his estate under section twenty-six, from such tenure-holders on his estate as are made liable to bear a portion of such expenses by sections sixteen and seventeen (of which sections a copy shall be annexed to the notice); and that, in order to enable the Collector to apportion the said amount among the said tenure-holders, he may give in a list of all such tenures as defined in this Act, held directly from him, with a specification of the number of boundary-marks of each description which are erected within or on the boundary of each tenure;

(f) and warning him that if he fails to give in a list of tenures as aforesaid on or before the said date, he will be deemed to have given up all claim to recover from the tenure-holders any part of the amount for which he may be held liable under section twenty-six.

26. On the date fixed in such notice, the Collector shall proceed to consider all objections which may be made to the provisional apportionment, and to make such final apportionment of the expenses as shall seem to him fit. In making such final apportionment, the costs of serving all notices under section twenty-five shall be distributed rateably among the estates concerned, in proportion to the share of the expenses of erecting boundary-marks which may be apportioned to each estate; and the amount so finally apportioned as payable in respect of each estate, together with the costs of serving notices, rateably distri-

Collector to make
final apportionment.

buted as aforesaid, shall be due to the Collector from the zemindars of such estates.

27. Notwithstanding anything contained in the last preceding section, the Collector may postpone the final apportionment, if it shall appear to him that a notice under section twenty-five has not been served on the zamindar of any estate which should be made liable for a portion of the expenses, or for any other sufficient reason.

28. Any zemindar failing to appear on the date fixed in the notice served on him under section twenty-five will be deemed to have waived all objections to the payment of the amount apportioned to his estate, and will not be entitled to prefer any objections thereto on any subsequent date; and any zemindar failing to give in a list of tenures (when called upon under section twenty-five to give in such list), on or before such date, will be deemed to have given up all claim to recover from the tenure-holders any part of the amount which may have been apportioned as payable in respect of his estate under section twenty-six.

29. So soon as the expenses shall have been finally apportioned under section twenty-six among the estates concerned as hereinbefore provided, the Collector shall issue a notice in respect of every estate, specifying the amount finally apportioned as payable in respect of the estate, and requiring the zemindar to pay such amount to the Collector, together with the costs of serving such notice, within one month of the issue of the notice. If such amount be not paid to the Collector within such period, the same, with interest, at such rate, not exceeding six per centum per annum, as the Lieutenant-Governor may from time to time determine, may be levied as provided in section fifty-seven.

The notice issued under this section shall assign to the zemindar, or to the zemindar jointly with tenure-holders, the boundary-marks which they are legally bound to preserve under the provisions of

Collector may postpone final apportionment.

Zemindar failing to appear will be deemed to have waived all objections.

Collector to issue a notice specifying amount finally apportioned.

Notice shall assign boundary-marks which zemindars are bound

section nineteen, and in respect of which they will be held liable to pay the costs of re-erection, maintenance, and repair, under the provisions of section twenty.

30. If the zemindar of any estate shall give in a list of tenures, as referred to in section twenty-five, with an application to the Collector to apportion between his estate and the tenures the amount which has been apportioned as payable in respect of his estate as aforesaid, the Collector shall proceed to make a provisional apportionment of the said amount between the zemindar and the tenure-holders, to serve notices on the said tenure-holders in the manner provided in section twenty-five, and to make a final apportionment among the said zemindar and tenure-holders in the manner provided in sections twenty-six and twenty-seven; and the provisions of section twenty-eight shall be applicable to such tenure-holders.

Provided that no separate notice shall be served under this section in respect of the provisional or final apportionment of the sum payable in respect of any tenure if such sum be less than two rupees; but in respect of all such sums it shall be sufficient to publish a list showing the sums apportioned as payable. Such list shall be published by being posted at the office of the Subdivisional Officer and at a conspicuous place in some village within which lands appertaining to the tenure are situate.

31. Notwithstanding anything in this Part contained, whenever the Collector may consider that he has sufficient information (whether derived from papers compiled for the purposes of the road cess, from enquiries made in the course of proceedings under this Act, or otherwise) to enable him in a summary way to make an apportionment of any expenses recoverable under this Act in respect of any estate, between the zemindars of, and the holders of tenures in, such estate, the Collector may, as soon as possible after he shall have made a provisional apportionment under section twenty-four of the sum payable in respect of such

estate, and without calling on the zemindar to give in any list of tenures as provided in clause (e) of section twenty-five, proceed to make a provisional apportionment between the zemindars and the tenure-holders of such estates of the sum which has been provisionally apportioned under section twenty-four as payable in respect of the estate.

32. Whenever any provisional apportionment of the sum payable between the zemindars and the tenure-holders may have been made summarily, as provided in the last preceding section, the notice to be served on the zemindar under section twenty-five shall inform the zemindar, in addition to the particulars specified in clauses (a), (b), (c) and (d) of the said section, and instead of those specified in clauses (e) and (f),

that, under this Act, he is entitled to recover a portion of the amount which shall be finally apportioned as payable in respect of his estate under section twenty-six from the tenure-holders on his estate ; and

that the Collector has made a provisional apportionment of the said sum between the zemindar and tenure-holders according to a list which shall be annexed to the said notice ;

and shall warn him

that if he fails to prefer any objection to such provincial apportionment on or before the date specified, he will be deemed to have given up all right to prefer any such objection at any future time ; and

that the Collector will proceed to make such apportionment final, or to make any modifications in it which he may think fit ; provided that the sum finally made payable by the zemindar shall not exceed the sum apportioned upon him in the said provincial apportionment between the zemindars and the tenure-holders.

33. As soon as a provisional apportionment between the zemindar and the tenure-holders shall have been made summarily as provided in section thirty-one, the Collector shall proceed to serve notices on the tenure-

Notice to be served on zemindar when provisional apportionment has been made summarily.

Procedure on provisional apportionment.

holders concerned in the manner provided in section thirty, and to do all other things as if the said provisional apportionment upon tenure-holders had been made on a list given in by the zemindar under section thirty.

34. In apportioning the amount among the zemindar and the tenure-holders, the Collector shall first deduct such sum as he shall consider to be fairly payable by the zemindar in respect of lands not included in any tenure, and in respect of his interest in lands which are included in tenures; and in apportioning the remainder among the tenures, he shall take into consideration the number of pillars erected within or on the boundary of each tenure, the extent of each tenure, and the distance at which it is situated from the boundary - marks; but no tenure shall be made liable for any portion of the sum so apportioned, unless some part of it be situated within fifteen hundred feet from some boundary-mark.

35. So soon as the final apportionment among tenure-holders under section thirty shall be completed, the Collector shall cause to be issued notices to each of the said tenure-holders, stating the amount payable in respect of each of their tenures, with interest (if any) calculated at the annual rate of six per centum from the date on which the zemindar paid to the Collector the sum which was apportioned on his estate under section twenty-six, and the cost of serving upon the tenure-holder the notice under this section and calling upon him to pay the total amount so due to the zemindar of the estate of which the tenure is a part, within one month of the date of the notice.

Provided that no separate notice shall be served under this section on any tenure-holder who is required to pay a sum of less than two rupees as his share of the expenses apportioned under this Act; but in respect of such sums it shall be sufficient to publish a list in the manner prescribed by section thirty, and no costs incurred in respect of the publication of any such lists shall be recoverable from any person mentioned therein as liable to pay less than two rupees.

36. Notwithstanding anything contained in section thirty-five, the Collector shall not issue the notices therein mentioned to the tenure-holders until the zemindars concerned shall have deposited with the Collector the full amount of the costs of serving all the notices, and of publishing the lists as required by that section.

37. The provisions of sections twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-four, and thirty-five shall be applicable, as far as possible, to every case in which any tenure-holder, who has been made liable for the payment of any share of expenses under this Act, may apply to the Collector to apportion the amount for which he has been made liable between himself and the holders of subordinate tenures direct from himself;

and the provisions of sections thirty-one, thirty-two and thirty three, regarding the procedure for making a provisional apportionment in a summary way between a zemindar and the tenure-holders on his estate, shall be applicable, as far as possible, to the provisional apportionment of expenses between the holder of a tenure and the holders of under-tenures, within his tenure;

provided always that no such apportionment shall be made in respect of ryots who have a right of occupancy only, and whose rent is not fixed in perpetuity.

38. Every zemindar or tenure-holder to whom any sum is payable under the preceding sections may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

39. The provisions of this Part shall apply to all sums expended by the Government since the first day of November one thousand eight hundred and seventy-four in erecting boundary-marks.

Collector not to issue notices to tenure-holders until zemindars have deposited costs.

Apportionment between tenure-holder and holder of subordinate tenure.

Recovery of sums payable to zemindar or tenure-holder.

Recovery of sums expended by Government since 1st November 1874

PART V.

BOUNDARY DISPUTES.

40. If it shall come to the notice of the Collector, in the course of a survey under this Act, that a dispute exists as to any boundary which should be surveyed, the Collector, after holding such enquiry as he may deem necessary, may determine such boundary as hereinafter provided.

41. The Collector shall determine the boundary according to actual possession, and cause it to be secured by boundary-marks; and the order of the Collector under this section shall, until it be reversed or modified by competent authority, have the force of an order of any Civil Court declaring the parties to be in possession of the land in accordance with the boundary as determined by the Collector.

Survey proceedings are evidence of actual possession, and must be regarded as correct so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title.—2 Suth. P. C., 286.

42. If, after holding the necessary enquiry, the Collector is unable to discover which party was in possession of the disputed land when he instituted the enquiry under this section, the Collector may take possession of the land in dispute, and retain possession thereof until some party shall have established his right to the said land.

43. Whenever the Collector thinks it necessary to decide a dispute as to any boundary under the last preceding section, he may, with the consent of the parties concerned, refer the same to arbitration.

The procedure laid down in Chapter VI of Act VIII of 1859 (*the Code of Civil Procedure*) shall, so far as may be practicable, be applicable to disputes so referred to arbitration.

44. If the boundary regarding which the dispute exists

Powers of a Collector when boundary determined by Court or by Revenue Survey.

as mentioned in section forty shall, at any previous time, have been determined by any Court of competent jurisdiction, or shall have been laid down and shown on a map in the course of any previous Revenue Survey or Settlement, and no objection to the boundary as then laid down and mapped shall have been preferred before any authority competent to decide on such objection ;

whenever the dispute relates to the boundary of an estate which is liable for revenue, or to any other boundary by which the interests of the Government may be affected, the Collector shall,

and whenever the dispute relates to any other boundary, the Collector may,

if he thinks fit, relay, as nearly as may be possible, the boundary as previously determined or laid down and shown on the map, and cause such boundary to be shown on the survey map, with an explanatory note to the same ;

provided that the relaying and record of a boundary by the Collector under this section shall not affect the possession of any land by any party ; and shall be in addition to the determination and record of the boundary according to actual possession required by section forty-one.

Nothing contained in this section shall be held to prohibit

Collector may deviate from boundary if parties agree.

the Collector from deviating from a boundary as held by actual possession or as shown on a former map,

and laying down a new boundary, if all the parties concerned agree to such new boundary, on the ground that the boundary held by actual possession, or as shown on the former map, was incorrect, and if it appears to the Collector that there is no objection to the adoption of such new boundary.

The reason for every such deviation shall be recorded in the Collector's proceedings.

Power of Collector at any time when doubt or dispute exists as to any boundary.

45. If it shall come to the notice of the Collector at any time, or in any manner, that a doubt or dispute exists in respect to any boundary

(a) which has at any time been determined by a competent Court ; or

(b) which has been laid down and shown on a map, in the course of a previous Revenue Survey or settlement, or other proceeding of a Revenue Officer for any special purpose, and against which no objection has been preferred to any authority competent to decide upon such objection; or

(c) which has been laid down by Survey under this Act, the Collector may, if he thinks it desirable for any reason that the boundary so determined or laid down shall be relaid, proceed to relay the boundary in the manner prescribed in section forty-four of this Act,

and, for the purpose of so relaying the boundary, he may make any enquiries and surveys which may be necessary, and such enquiries and surveys shall be deemed to be proceedings under section six, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of enquiries and surveys under that section.

Sec. 45. cl. (b) of this Act applies only to a survey or some similar proceeding taken by a Revenue Officer "for some public purpose." and against which any party, who may be affected by the boundary laid down by such officer, would have a right to object

Therefore, where such a proceeding, although initiated under Beng. Act V of 1875, has been taken for the purpose of settling the boundaries of private property as between the owners of it, the party aggrieved by the order of the Collector in such proceeding is not debarred by s. 62 of the Act from bringing a suit in the Civil Court to have the boundaries ascertained.—I. L. R., 6 Cal., 153.

Field, J., in the above case said: "The jurisdiction given to the Collector in boundary disputes by Beng. Act V of 1875 is a limited one. When the Collector is engaged in the survey of a district, or portion of a district, which has been authorized by the Lieutenant-Governor under s. 3 of the Act, he has then power under s. 40 to deal with boundary disputes arising and necessary to be determined in the course of such survey. It is perfectly clear that no such survey was being conducted in the present case, and that, therefore, the provisions of ss 40 to 44 have no application. The submission of the plaintiff to the proceedings erroneously taken under Act V of 1875 could not give to the Collector a jurisdiction not conferred on him by the Act,"

46. Whenever the Collector shall have determined a boundary which was in dispute, and

In certain cases Collector may cause marks to be erected. the order shall have become final,

and whenever a boundary which has been supplied by the survey officers, or has been determined under this Act, has been altered by a decree of any Civil Court, which has become final,

and whenever it shall come to the notice of the Collector

that any boundary has been determined by a competent Court or authority,

the Collector may cause such marks as he may think fit to be erected in order to secure the boundary permanently, and the provisions of Parts III and IV shall, so far as is possible, be applicable to boundary-marks which are erected under this section, and to the apportionment of the cost thereof.

PART VI.

MISCELLANEOUS.

47. Whenever any estate or tenure is held jointly by two or more zemindars or tenure-holders, all such zemindars and tenure-holders shall be jointly and severally liable in respect of every liability imposed on zemindars or tenure-holders respectively by this Act ;

Joint zemindars to be subject to every liability imposed on single zemindars.

And any shareholder in any estate or tenure who may have paid the amount finally apportioned to such estate or tenure, may recover from his co-sharers such sums as may be payable in respect of their shares as arrears of rent, or may take credit for such sums in any adjustment of accounts between himself and co-sharers.

48. Every notice in and by this Act required to be served on any person may be served—

Service of notice.

(1) By delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to a general agent of the person to whom such notice is directed ; or

(2) By sending a registered letter containing such notice directed to the said person at his usual place of abode, or to the place where he may be known to reside ; or

(3) By posting a copy of the notice at any mal cutcherry of the estate or tenure of the person to whom the notice is directed ; or, if no such mal cutcherry be found, on some conspicuous place on the said estate or tenure to which such notice relates, and by delivering, in the case of

estates paying their annual revenue by four instalments, another copy thereof to any agent who shall have paid an instalment of revenue next after the preparation of such notice. In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

49. No proceedings under this Act shall be affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure or land in respect of which he is rendered liable to pay, or by reason of any other informality, provided the directions of this Act be in substance and effect complied with ; and no proceedings under this Act shall be affected by reason of the omission to serve any notice on any zemindar whose name is not recorded on the Collector's registers as owner of the estate in respect of which the notice is required to be served.

50. For the purpose of any enquiry under this Act, the Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses and compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a Court under the Code of Civil Procedure.

51. If any person shall fail to comply with a requisition contained in any special notice served under section seven of this Act, or in any notice served for the purpose of any inquiry under Part V of this Act, within the time specified in such notice, the Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees, and such fine shall be payable daily until the requisition is complied with ; and the Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending :

Provided that whenever the amount levied under any

such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

52. Any person, being bound by the provisions of section nineteen to give notice to the Collector in respect of any boundary-mark having been injured, destroyed, or removed, or requiring repairs, who shall fail to give such notice, shall be liable to a fine, not exceeding one hundred rupees, to be imposed by order of the Collector.

53. Any person convicted before a Collector of wilfully erasing, removing, or damaging any boundary-mark (not being a landmark fixed by the authority of a public servant within the meaning of section 434 of the Indian Penal Code) which has been lawfully erected, may be ordered by the convicting officer to pay such sum, not exceeding two hundred rupees, for each mark so erased, removed, or damaged, as the said officer may think fit, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so erased, removed, or damaged.

54. The Collector may award any portion of a fine imposed under either of the two last preceding sections, and which may be realised, to any person who may have given information leading to the imposition of the fine.

55. A fine under sections fifty-one, fifty-two, and fifty-three may be levied, as far as may be practicable, in the manner provided in section 307 of the Code of Criminal Procedure; but if no moveable property belonging to the person from whom the fine is due is found in the district within which the order was passed, then such fine may be levied as if it were an arrear of revenue.

56. Whenever the person erasing, removing, or damaging any boundary-mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been so ordered to pay, the boundary-mark shall be restored or

repaired by the Collector, and the expenses thereby incurred shall be recovered from the occupants of such of the conterminous lands, and in such proportions as to the Collector may seem fit.

57. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred, or of any notices served, or of any costs payable by any party in an appeal, shall be deemed to be a demand.

As amended by Act VII of 1880, B. C., Sched. i.

58. Except as provided in sections fifty-nine and sixty, no appeal shall lie, as of right, against any order passed under this Act by any officer; but the proceedings and orders of Assistant Superintendents and of Deputy Collectors under this Act shall be subject to the supervision and control of the Superintendent of Survey or Collector; the proceedings and orders of the Superintendent of Survey and of the Collector, to the supervision and control of the Commissioner of the Division; and the proceedings and orders of all officers, to the supervision and control of the Board of Revenue.

Provided that the Government may order that, in the course of any survey under this Act, the functions of the Commissioner shall be restricted to the decision of appeals under section sixty, and that the general powers of control and supervision over the Superintendent of Survey or Collector and their subordinate officers may be exercised by the Board of Revenue direct.

59. An appeal, if presented within one month of the date of the order appealed against, shall lie to the Collector or Superintendent of Survey against every order of a Deputy Collector or of an Assistant Superintendent, or Deputy Collector.

(a) determining under section eight the amount to be paid as the price of materials or labor supplied;

(b) determining under section ten the amount to be paid as compensation;

- (c) deciding a boundary dispute ;
- (d) imposing a fine under this Act.

60. An appeal, if presented within one month of the

Appeal to Commissioner against order of Collector or Superintendent of Survey. date of the order appealed against, shall lie to the Commissioner of the Division against every order of the Collector or Superintendent of Survey,

(a) determining under section eight the amount to be paid as value of materials or labor supplied,

(b) determining under section ten the amount to be paid as compensation ;

(c) determining a disputed boundary ;

(d) imposing a fine of more than fifty rupees on any person,

provided that the order appealed against under clauses (a), (b), and (c) shall not have been passed by the Collector or Superintendent of Survey on an appeal preferred against the order of a subordinate officer.

61. The Commissioner, Collector, or Superintendent of Survey may pass such orders as they shall think fit in respect of the payment of costs incurred by any party in an appeal.

62. No suit shall be brought to set aside an order of a Superintendent of Survey, Collector, Assistant Superintendent, or Deputy Collector deciding a boundary dispute, unless an appeal shall have been first preferred under section fifty-nine or section sixty, or unless the person suing was at the time when such order was passed a minor, or insane, or an idiot.

Board of Revenue may lay down rules with sanction of Lieutenant-Governor.

63. With the sanction of the Lieutenant-Governor the Board of Revenue may lay down rules, not being inconsistent with this Act,

to provide for the preparation of maps and registers, and for the collection and record of any information in respect of any land to be surveyed under this Act ;

and generally to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken under this Act.

All enquiries ordered to be made for the collection of

information under such rules, shall be deemed to be enquiries under section six, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of enquiries under that section.

PART XXVI.

Wards.

ACT No. IX (B. C.) OF 1879.

(As amended by Act III (B. C.) 1881.

An Act to amend the law relating to the Court of Wards.

WHEREAS it is expedient to amend the law relating to
 Preamble. the Court of Wards within the territories under the administration of the Lieutenant-Governor of Bengal; It is enacted as follows:—

PART I.

Preliminary.

Short title.

1. This Act may be called the Court of Wards Act, 1879.

Extent.

It extends to all the territories under the administration of the Lieutenant-Governor of Bengal, including the scheduled districts of Bengal as defined in the Scheduled Districts Act, 1874.

Commencement.

It shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor General.

2. Bengal Act IV of 1870 (the Court of Wards Act), section 11 of Act XXXV of 1858, sections 12, 14, and 15 of Act XL of 1858,

Repeal of Acts.

and so much of section 21 of Act XL of 1858 as provides that the Civil Court may direct the Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards as constituted by Bengal Act IV of 1870, shall be deemed to be under the charge of the Court of Wards as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 11 of Act XXXV of 1858, or under section 12, section 14, or section 21 of Act XL of 1858, shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules prescribed, orders or appointments made, and agreements executed under the Court of Wards Act, 1870, and now in force, shall (so far as they are consistent with this Act) be deemed to be respectively prescribed, made, and executed under this Act.

And all orders and appointments made by Collectors under Act XXXV of 1858 or Act XL of 1858, and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

And all suits and proceedings now pending, which may have been commenced under the Court of Wards' Act, 1870, or by Collectors under Act XXXV of 1858 or Act XL of 1858, shall be deemed to be commenced under this Act.

3. In this Act, unless there be something repugnant in the subject or context—

Interpretation. 'Collector.' 'Collector' includes any officer in charge of the revenue jurisdiction of a district;

'Court.' 'The Court' means the Court of Wards;

or when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated;

'Estate.' 'Estate' means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue;

'Minor' means a person who has not completed his age of twenty-one years;

'Minor.'

'Section.'

'Section' means a section of this

'Ward' means any person who is under the charge of the Court of Wards, or whose property is under such charge.

'Ward'

4. Nothing contained in this Act shall affect any of the provisions of Act XXXIV of 1858 or the jurisdiction, as respects infants, of any High Court of Judicature.

Saving of Act XXXIV of 1858 and of jurisdiction of High Courts.

PART II.

Constitution, Jurisdiction, and Powers of the Court of Wards.

5. The Board of Revenue shall be the Court of Wards for the territories to which this Act extends.

Board of Revenue to be Court of Wards.

It shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provisions of this Act.

6. Proprietors of estates shall be held disqualified to manage their own property when they are—

Disqualified "proprietors.

(a) females declared by the Court incompetent to manage their own property ;

(b) persons declared by the Court to be minors ;

(c) persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs ;

(d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property.

7. Whenever the sole proprietor of an estate, or all the joint-proprietors of an estate are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction ; and also of the person

Jurisdiction of Court over disqualified proprietors.

and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor.

8. Whenever the circumstances of any ward become such that the Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to release from its charge such person and his property.

Court when bound to give up charge.

9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor,—

Discretion of Court as to taking charge.

(a) take charge of such property without taking charge of such person ;

(b) refrain from taking charge of any such person or property ;

(c) at any time withdraw from such charge if taken ;

(d) at any time resume such charge, after having withdrawn from it.

10. Whenever a Civil Court thinks it necessary, under section 9 of Act XL of 1858, to make provision for the charge of the person and property of a minor,

Procedure under Act XL of 1858, and Act XXXV of 1858.

whenever a Civil Court recalls any certificate under section 21 of the said Act,

or whenever a person has been adjudged, under Act XXXV of 1858, to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor ; and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act XXXV of 1858 shall be held to apply to persons or properties under the charge of the Court of Wards.

11. Whenever one or more of the joint proprietors of

Procedura when estate is no longer under Court because some proprietors have ceased to be disqualified.

whose properties the Court of Wards has taken charge ceases to be subject to the jurisdiction of the Court of Wards, and the persons and properties of the remaining joint proprietors thereby cease to be subject to the jurisdiction of the Court of Wards, notwithstanding the otherwise continued disqualification of such remaining joint proprietors, the Civil Court which would have jurisdiction under Act XL of 1858 may, on the application of the Court of Wards, direct the Court of Wards to retain or resume charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification, or, subject to the provisions of section 12, for so long as such Civil Court may order.

And in case any of the proprietors who have ceased to be subject to the jurisdiction of the Court of Wards so consent, the Court of Wards may retain or resume the charge of the properties of such proprietors, or any part thereof, so long as the property of any of the disqualified proprietors remains in charge of the Court of Wards.

12. The Court of Wards may at any time withdraw

Withdrawal from charge by Court.

from the charge of any person and property taken under section 10 or under section 11, and from the charge of any person or property which, before the commencement of this Act, was placed under the charge of the Collector by a Civil Court under section 12, section 14, or section 21 of Act XL of 1858, or under section 11 of Act XXXV of 1858 :

Provided that it shall give notice of its intention to withdraw to the Civil Court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

13. Whenever, on the death of any ward, the succes-

Procedure when succession to property disputed.

sion to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal

Act VII of 1876, or until the dispute has been determined by a competent Civil Court.

General power of Court. 14. Subject to the provisions of this Act the Court—

(a) may, through its manager, do all such things requisite for the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Civil Court, as the proprietor of any such property, if not disqualified, might do for its care and management; and

(b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.

15. The Court may exercise all or any powers conferred on it by this Act through the Commissioners of the divisions and the through others. Collectors of the districts in which any part of the property of the disqualified proprietor may be situated, or through any other person whom it may appoint for such purpose.

The Court may, with the sanction of the Lieutenant-Governor, from time to time, delegate Delegation of powers. any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time, with the like sanction, revoke such delegation.

16. The Court may from time to time order such establishments to be entertained and expenses to be incurred as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all the purposes of this Act, and may order that such expenses, inclusive of all salaries, gratuities, and payments on account of the leave allowances of such establishments, be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

As amended by Act III, 1881 (B. C.)

17. The Court may, in respect of such of the establishments and expenses referred to in the last preceding section as are in the judgment of the Court of a general nature, direct that they shall be met by a general contribution from the properties in charge of the Court, to be levied in such manner and in such proportion as the Court may from time to time direct. It shall be, and shall be deemed always to have been, lawful to charge against any fund to which such general contribution may from time to time be, or have been, credited, any salaries, gratuities, leave allowances, or pensions of officers and servants which the Lieutenant-Governor may order, or has already ordered, to be so charged.

General contribution
for general purposes.

Charges for pensions
and leave allowances.

As amended by Act III, 1881 (B. C.)

18. The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector to partition off such part into a separate estate, and the demand of land-revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant-Governor, may direct.

When Court may
order property to be
formed into a separate
estate.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward under the charge of the Court, and may control and remove any manager or guardian so appointed.

Appointment of ma-
nagers and guardians.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

21. The Court may make such orders as to it may seem fit in respect of the custody, education, and residence of a minor ward, and such minor members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

22. The Court shall allow, for the support of each ward and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

23. *Clause I.*—Except as hereinafter provided by section 23a, every estate, and, subject to the provisions of section 14 of Act XI of 1859, every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act VII of 1876, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court :

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

Clause II.—If, at the time when such estate, share, or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part, and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part

either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit:

Provided that when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23a. Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in section 23 of this Act contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold under the provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Sections 23 and 23a as amended by Act III, 1881 (B. C.)

24. No estate, the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Estate belonging to minor not to be sold for arrears of revenue.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect

But Collector may attach estate.

the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply

When exemption from sale for arrears of revenue applies.

to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

26. When an estate has been farmed under the provisions of section 24, the proceeds of

Application of proceeds of farmed estate.

such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49, or in section 50.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

27. Whenever any Collector has reason to believe that

Collector to make enquiry and report as to disqualified proprietors.

any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such enquiry as he may deem necessary, and if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court:

and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

28. Nothing in section 27 shall prevent the Court or the Local Government from putting the provisions of this Act in force without any report from the Collector.

Power to enforce provisions of Act without report.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue-roll of his district has died, or that the sole proprietor of any estate has died within his district,

Proceedings on death of a proprietor whose heirs are disqualified.

and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the moveable property of such heirs, and of all deeds, documents or papers relating to the property of such heirs, as to him may seem fit.

Such Collector may call upon any other Collector in whose jurisdiction any such moveable property, or any such deeds, documents, or papers may be, to take charge of the same, and thereupon such other Collector shall have the same powers with respect to such property, deeds, documents, and papers within his district as are conferred by this section on the first-mentioned Collector.

If the property be not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue from the owner of such property or the person or persons whom the Collector shall find to be in possession of such property, and shall constitute a demand under Bengal Act VII of 1868, or any similar law for the time being in force.

Recovery of expenses.

30. A Collector acting under the last preceding section may direct that any person who has the custody of a minor heir of any such deceased proprietor shall produce such minor before such Collector or before any other Collector on a day fixed, and the Collector before whom the minor is so produced may make such order for the temporary custody and protection of such minor as to him may seem fit.

Production of minor proprietor, and order for his temporary custody.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

31. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be of unsound mind and incapable of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act XXXV of 1858, to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

32. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the district within which such person may be residing; and upon such Collector so applying, such Civil Court shall enquire into and determine the question as to the alleged incapacity.

33. If a sole proprietor of an estate, who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal, shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the 24-Pergunnahs, or to such other Civil Court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such Civil Court shall thereupon enquire into and determine the question as to the alleged incapacity.

34. When any enquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such enquiry, have the powers conferred, and proceed in the manner prescribed, by Act XXXV of 1858 with respect to the enquiries directed to be made by the said Act.

Powers of Civil Court when enquiry is instituted under section 32 or 33.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such enquiry, and the Court of Wards shall thereupon, in case the proprietor has been found by the Civil Court to be incapable as aforesaid, make such order, consistent with this Act, as it shall think fit.

The Civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a Civil Court by section 21 of Act XXXV of 1858, with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

35. Whenever the Court has determined to take the Order declaring estate person or property of a disqualified under charge of Court. proprietor under its charge, whether in accordance with an order of the Civil Court or otherwise, the Court shall make an order declaring the fact and directing that possession be taken of such person and property or of such property on behalf of the Court, and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

36. As soon as conveniently may be after an order is made under the provisions of section 35, the Collector of every district within which any part of the ward's property may be situated, or some person authorized in

Collector to take possession of moveable property.

writing by him in that behalf, shall take possession of all accounts, papers, and moveable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper or property is in any room, box, or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper, or property.

37. Any such Collector may also order all persons in Additional powers of the employ of the ward or all persons Collector. who were in the employ of the deceased proprietor from whom the ward has derived his property, to attend before him,

and may order any person to deliver up any accounts, papers, or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession, •

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures. •

PART VI.

MANAGEMENT AND GUARDIANSHIP.

38. If no manager of the property of a ward is appointed by the Court, the Collector of the deemed manager. district in which the greater part of such property is situated, or any other Collector whom the Court may appoint in that behalf, shall be competent to do under the orders of the Court anything that might be lawfully done by the manager of such property.

39. Every manager appointed by the Court shall have Powers of manager. power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor ;

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the ward's interest as if the property were his own.

Specific duties of manager. 41. Every manager appointed by the Court shall—

(a) have the care of so much of the property of the ward as the Court may direct;

(b) give such security (if any) as the Court thinks fit to the Collector duly to account for all such property and for what he shall receive in respect of such property;

(c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;

(d) pass his accounts at such periods and in such form as the Court may direct;

(e) pay the balance due from him thereon;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;

(g) sign all papers, deeds, documents, and writings which may be executed by him by virtue of his office;

(h) be entitled to such allowance, to be paid out of the property, as the Court may think fit for his care and pains in the execution of his duties;

(i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

42 A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

Specific duties of guardian. 43. Every guardian appointed by the Court shall—

(a) give such security (if any) as the Court thinks fit to the Collector for the due performance of his duty;

(b) pass his accounts at such periods and in such form as the Court may direct;

pay the balance due from him thereon;

(d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship ;

(e) apply for the sanction of the Court to any act which may involve expense not previously sanctioned by the Court ;

(f) be entitled to such allowance, to be paid out of the property of the ward, as the Court may think fit for his care and pains in the execution of his duties.

44. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian ;

but nothing in this section shall apply to the mother of a ward, or to a testamentary guardian.

45. If the ward is a female, a female of the same religion shall, except in the case of a testamentary guardian, be appointed guardian, preference being given to female relatives if any such be eligible.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Every sum due to the Court from a manager or guardian, or from the sureties of a manager or guardian, or from any officer or servant employed under the Court, or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act VII of 1868, or any similar law for the time being in force.

47. The Court may order any past or present manager or guardian, or past or present officer or manager to subordinate to a manager or guardian, to deliver up his accounts or any property which may be in his possession within such time as may be fixed by the Court :

48. All moneys received by the manager shall be applied to the purposes hereinafter mentioned in accordance with such instructions as the Court may from time to time give in that behalf. Unless the Board of Revenue shall especially otherwise direct, priority shall be given to the purposes included under Class I over those

included in Class II, and priority shall be given to the purposes included in Class II over those included in Class III.

CLASS I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family,

for the management and supervision of the property of the ward,

and the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

CLASS II.

The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward,

the liquidation of debts payable by the ward,

the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise.

the maintenance in an efficient condition of the estates, buildings and other immoveable property belonging to the ward, and

the payment of such religious, charitable, and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

CLASS III.

The improvement of the land and property of the ward, and the benefit of the ward and his property generally.

Provided that the amount expended for such improvement and benefit in any one year shall not exceed ten per centum of the surplus which the accounts of the

Amount to be expended on improvement.

previous year may show to have been available after paying or making provision for the payment of all expenses incurred up to the end of such previous year, unless, in the opinion of the Court and of the Lieutenant-Governor, it is

desirable for the protection or in the interests of the ward or his property to expend an amount exceeding such percentage.

As amended by Act III, 1881 (B. C.)

49. If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years, whose property remains under the charge of the Court with his consent under section 11, no part of the surplus mentioned in the proviso to the section immediately preceding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining after provision has been made for such purposes, shall be paid to such ward.

Provided that before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain—

(1) as a working balance for the management of the property and expenses incidental thereto ;

(2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.

As amended by Act III, 1881 (B. C.)

50. If the ward is not a female or male as aforesaid, and if any surplus remains after providing so far as the Court may think fit for the objects mentioned in section 48, the same shall be applied in the purchase of other landed property, or invested at interest on the security of—

promissory notes, debentures, stock, and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;

bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India ;

stock or debentures of or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council ;

debentures or other securities for money paid by or on behalf of any municipal body under the authority of any Act of a Legislature established in British India ;

or such other securities, stocks, or shares, guaranteed by the Government of India or the Government of Bengal as to the Court shall seem fit.

As amended by Act III, 1881 (B. O.)

PART VII.

SUITS.

51. In every suit brought by or against any ward he shall be therein described as a ward of Court ; and the manager of such ward's property, or if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward, and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending.

A Collector when acting as agent of the Court of Wards in respect of the estate of a disqualified person is a public officer within the meaning of ss. 2 and 424 of Act X of 1877 (now Act XIV, 1882) and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—I. L. R., 3 All., 21.

This was a ruling under the N. W. P. Court of Wards' Act (XIX of 1873).

52. The Court of Wards may by an order nominate or substitute any other person to be next friend or guardian for any such suit ; and upon receiving a copy of any such order of substitution, the Civil Court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

53. If in any such suit any Civil Court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

54. Every process which may be issued out of any Civil Court against any ward shall be served, through the Collector, upon the next friend or guardian for the suit as aforesaid of such ward.

55. No suit shall be brought on behalf of any ward by a manager unless the same be authorized by some order of the Court:

provided that a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but such suit shall not be afterwards proceeded with except under the sanction of the Court:

provided also that suits for arrears of rent may be brought on behalf of any ward if authorized by an order of the manager of the landed property on which such rents are due.

56. Nothing contained in this Part shall apply to any suit instituted or pending in the High Court, or to a proprietor who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11.

PART VIII.

PENALTIES.

57. Any person who refuses to comply with an order of a Collector under section 29, 30, 36, or 37, shall be liable, by order of the Collector, to a fine not exceeding five hundred rupees.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order of the Court, with

simple imprisonment and attachment of his property until the order is complied with.

Provided that the Collector may release any person who has been so imprisoned on his furnishing sufficient security for his attendance and for the delivery of the accounts or property required within such time as the Collector shall think fit. The Collector may at any time rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.

As amended by Act III, 1881 (B. C.)

"Until the order is complied."

This section appears to be *ultra vires*. It would be legal to enact that contumacy may be punished with simple imprisonment for six months or until the order is complied with. A Civil Court cannot order more than six months' imprisonment; and even so the debtor may claim to be made an insolvent. Punishment might be awarded under ss. 176, 177 of the Penal Code.

58a. Any farmer holding or having held lands under the Court who, upon notice served upon him to that effect at any time during the currency of the lease or within six months after the expiry of the lease under which such lands were held or after he has relinquished such lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or last-known place of abode of such person, and in case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such a way as the Collector issuing

the notice may direct, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner.

Added by Act III, 1881 (B. C.)

59. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees, and if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees.

For disobeying order of Court.

PART IX.

MISCELLANEOUS.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof.

Disabilities of wards.

On a reasonable construction of the whole of Reg. X of 1793, a ward of Court, duly constituted as such, is not thereby absolutely incapacitated from contracting, but the power of the ward to contract is taken away so far as regards all property which, under the provisions of the law, comes under the charge and control of the Court of Wards. No express provision is to be found either in Reg. X of 1793 or Reg. LII of 1793 or Act IV of 1870, B. C. But s. 60 of the present Act states in express language the result of a reasonable construction of the old Regulations. The house and the money allowed for the support of the proprietor are in the disposing power of the ward, and with regard to these, the ward must retain the power of contracting.—I. L. R., 8 Calc., 620.

61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor.

Adoption by ward invalid without consent of Lieutenant-Governor.

obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.

62. Nothing contained in section 60 or in section 61 shall apply to a proprietor who has consented to leave his property under the charge of the Court, as provided in the second clause of section 11.

Exception as to persons who consent to remain wards.

63. Any amount of interest which has accrued due on arrears of rent or other demand recoverable as rent payable to the manager of an estate which is in charge of the Court, may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force, and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demand are recoverable, may direct that any costs incurred by the manager in obtaining such order or certificate, and in executing the same, shall be recovered in the same manner and by the same process as if the amount thereof had been included in the said order or certificate.

Recovery of interest on arrears of rent.

As amended by Act III, 1881 (B. C.)

Section 63 had been totally repealed by Act VII, 1880 (B.C.) The amending Act substitutes a new section.

64. When any penalty is imposed by any order under section 57 or section 58, the Collector or Court passing such order shall make a formal record of the same with the reasons or grounds thereof.

Collector or Court to record reasons of penalties.

65. Whenever the Court has determined to release the property of a ward from its charge, it shall make an order that the jurisdiction of the Court over such property shall cease on a date not more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

Procedure when Court's jurisdiction ceases.

65a. Any expense incurred by the Court on account of any property under its charge may, after the release of such property, be recovered as a demand under Bengal Act VII of 1880. or any other Act at

Recovery of expense incurred on account of property in charge of Court.

the time being in force for the recovery of public demands, from any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property: Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person.

Added by Act III, 1881 (B. C.)

66. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

Powers of Collector in making enquiries.

67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the Division, and from every order of a Commissioner under this Act to the Court.

Appeals.

68. All orders or proceedings of the Commissioner and of the Collector under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify, or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

Control of Court.

69. In the exercise of the powers and in the discharge of the duties conferred and imposed respectively on the Court by this Act, the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.

Control of Lieutenant-Governor.

70. The Court may make rules consistent with this Act—

Power to Court to make rules.

(a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more divisions;

(b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property;

(c) prescribing the periods at which and the mode in which accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited;

- (d) regulating the custody of securities and title deeds belonging to the estate or property of a ward ;
- (e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act ;
- (f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court ;
- (g) and generally for the better fulfilment of the purposes of this Act.

The Court may from time to time alter, add to, or repeal such rules.

ACT No. XXXV OF 1858.

[As amended by Act IX (B. C.) of 1879.]

An Act to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.

WHEREAS it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature ; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained ; It is enacted as follows :—

A Hindu, being a lunatic, may be possessed of property, although he cannot take it by inheritance. All dealings with such property to be binding must be effected by a guardian or manager duly appointed by the supreme civil authority ; and since the passing of Act XXXV of 1858, a guardian or manager can only be appointed in the special manner prescribed by that Act. A *de facto* manager can have no greater powers than one duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed.—10 B. L. R., 364.

Act XXXV of 1858 contemplates only the question of lunacy or sanity at the time of the inquiry ; there is no provision in the Act that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind.—2 Suth. P. C., 371.

1. So much of section 5, Regulation X, 1793, of section 9, Regulation LII, 1803, of Regulations repealed. Regulation I, 1800, and of section 29

Regulation VIII, 1805 (extended to Benares by section 2, Regulation VI, 1822), of the Bengal Code; and so much of sections 6 and 7, Regulation V, 1804, and of sections 20 and 22 of the said Regulation (as modified by section 3, Regulation X, 1831) of the Madras Code as relate to lunatics or idiots—are hereby repealed.

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court, within whose jurisdiction such person is residing, may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

A lunatic had been for a number of years in involuntary confinement in Bhowanipur Lunatic Asylum, within the jurisdiction of the Court of the 24-Pergunnahs, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property.—*held*, that, as the lunatic was residing within the jurisdiction of the Court of the 24-Pergunnahs, the Judge could, under Act XXXV of 1858, s. 2, inquire into the fact of his insanity and order a manager to be appointed to the estate.—2 B. L. R., A. C., 246.

3. Application for such enquiry may be made by any relative of the alleged lunatic or by any public curator appointed under Act XIX of 1841, or by the Government pleader, or if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Collector of the district in which it is situate. If the property or any part thereof be of such a description as by the law in force in any Presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and guardian of his person under Act XXXV of 1858. The lunatic had an interest both in joint ancestral property and in property inherited collaterally, which might, but was not shown to, belong to him separately. The lower Court found that the application was made with a view to taking consequent proceedings for partition.

Held that, it appearing that he had remained for sixteen years in the same house under the same guardians, and there being no allegation of ill-treatment, no sufficient grounds were shown for the Court's interference, or the appointment of another guardian of his person. Before any action can be taken under the Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit. *Held* also, that as his daughter could not inherit his ancestral property, and as it was doubtful if the collaterally inherited property was the separate property of the lunatic, the Court would not, under such circumstances, appoint a manager of the property, but that the guardians of the lunatic, who were managers of the joint family, should, on her request, furnish accounts to the daughter, of the management of the collaterally inherited property.

Seemle.—Act XXXV of 1858 applies to the members of a Mitakshara family.

Quære.—Assuming the application to be made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had?—I. L. R., 6 Calc., 539.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic. The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

6. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled

Rules respecting attendance and examination where the alleged lunatic is a woman of rank.

to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

7. The Civil Court, if it think fit, may appoint two or more persons to act as Assessors to the Court in the said enquiry.

Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as

Order of Court. to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court, to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the

Report of subordinate Court. enquiry the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.

Order of Civil Court. 9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any

Management of lunatic's estate, if consisting of property subject to Court of Wards. Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all

In all other cases. other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a Manager of the estate. Any near relative of the

Who may be appointed Manager. lunatic, or the public curator, or, if there be no public curator, any other suitable person may be appointed Manager.

On an application for the appointment of a guardian to the estate of a lunatic, the Judge should only appoint a person to take charge of the

estate of the lunatic, without specifying of what that estate consists.—4 B. L. R., 24, App.

10. Whenever a Manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The Manager, unless he be the public curator, may be appointed guardian. Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

11. [*Repealed by s. 2, Act IX (B. C.) of 1879.*]

12. If the person appointed to be Manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable.

13. The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

14. Every Manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic: and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such Manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

15. Every person appointed by the Civil Court or by the Collector to be Manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the

lunatic and of all such sums of money, goods, and effects as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such Manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the District, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Proceeding if accuracy of inventory or accounts be impugned. If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the Manager and enquire summarily into the matter and make such order thereon as it shall think proper; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the Manager was appointed by the Collector.

Before any action can be taken under Act XXXV of 1858, a strong case should be made out, that such action would be for the lunatic's benefit.

The custodians of a lunatic and the Managers of his estate should furnish accounts of the management of the property at the request of the natural heir of the lunatic.

Semble—that, under certain cases, Act XXXV of 1858 would apply to a member of a Mitakshara joint family.—9 C. L. R., 30.

16. All sums received by a Manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and may be invested from time to time in the public securities.

17. It shall be lawful for any relative of a lunatic to sue for an account from any Manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

18. The Civil Court, for any sufficient cause, may remove any Manager appointed by the Court, not being a public Curator, and may appoint such Curator or any

Removal of Manager or Guardian by Civil Court.

other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all monies received or disbursed by him. The Court may also, for any sufficient cause, remove any Guardian appointed by the Court. In like manner the Collector, for any sufficient

Removal by Collector. cause, may remove any Manager or Guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any Manager so removed to deliver his accounts and the property in his hands.

19. The Civil Court may impose a fine not exceeding five hundred rupees on any Manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

Manager refusing to furnish accounts may be fined by the Court, &c. 20. If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a Manager of the estate as hereinbefore provided, the Court may, instead of appointing such Manager, order that the property, if money or if of any other description, the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

Court may in certain cases apply property for lunatic's maintenance without appointing any Manager. 21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such per-

son is or is not still of unsound mind, and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act; and if it be adjudged that such person has ceased to be of unsound mind and incapable of

And may order estate to be restored. managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

22. Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act, shall be open to appeal. Orders to be open to appeal. be open to appeal under the rules in force for appeals in miscellaneous cases.

On an application made by the wife and son of Tajumal Husain, an alleged lunatic, under the provisions of Act XXXV of 1858, s. 3, the daughters of the alleged lunatic, who were served with a notice under s. 4 of the same Act, appeared at the hearing of the application and cross-examined the witnesses examined in support of the application. The Judge found that Tajumal Husain was of unsound mind, and appointed his wife, Musamat Natifan, to be the guardian of his person. The daughters appealed to the High Court.

Held (on an objection being taken that the appellants had no *locus standi*), that the daughters were entitled to appeal under the provisions of s. 22.—*Sherman v. Schorn*, 24 W. R., 124, referred to.

Quære—Whether a right to sue to recover a property, would be sufficient to confer jurisdiction under Act XXXV of 1858?—I. L. R., 8 Calc., 263.

23. The word 'Lunatic,' as used in this Act, unless Interpretation. the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. 'Lunatic.'

The expression 'Civil Court' shall mean the principal Court of original jurisdiction in the District. 'Civil Court.'

Gender. Words importing the masculine gender shall include females.

ACT No. XL OF 1858.

*An Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal.**

WHEREAS it is expedient to make better provision for the care of the persons and property of minors not brought under the superintendence of the Court of Wards ; It is enacted as follows :—

B, a Hindu governed by the Mitakshara law, died, leaving two minor sons, *J* and *K*, and also a widow, *L*, and two minor sons by her ; the mother of *J* and *K* having pre-deceased him. On *J*'s attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management ; and *L* then applied under Act XL of 1858, and obtained a certificate with respect of the shares of *K* and her two minor sons. Subsequently *K* having attained majority, his share was excluded from the operation of the certificate. On the death of *J*, leaving *H*, his widow, and an infant son by her, *H* applied for a similar certificate, under Act XL of 1858, with respect to the property of her son, and it appeared that *K* was incapable of managing the property.

Held, that though the certificate granted to *L* had been improperly obtained, *H* was not entitled to one, as no partition having taken place since *B*'s death, the property was still the joint family property.

Held also, that neither the granting of the certificate to *L*, nor the registration of the specific shares of each of the co-owners under the provisions of the Land Registration Act, amounted to a partition such as to justify the Court in granting the certificate asked for.—I. L. R., 5 Calc., 219.

Gourah Koeri v. Gujadhur Purshad followed.—I. L. R., 7 Calc., 369.

1. [*Repealed by Act No. XIV of 1870.*]

2. Except in the case of proprietors of estates paying revenue to Government who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the Civil Court.

The mother and guardian of a Hindu minor may, although she has not got a certificate, deal with the estate of the minor within the limits allowed by the Hindu law.—I. L. R., 3 All., 535.

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act No. XV of 1858.

3. Every person who shall claim a right to have charge

Who may apply for of property in trust for a minor
certificate of adminis- under a will or deed, or by reason of
tration. nearness of kin or otherwise, may

apply to the Civil Court for a certificate of administration;
and no person shall be entitled to institute or defend

No person to sue or any suit connected with the estate of
defend suit without cer- which he claims the charge until he
tificate. shall have obtained such certificate.

Provided that, when the property is of small value, or
for any other sufficient reason, any

Power to allow rela- Court having jurisdiction may allow
tive of minor to act. any relative of a minor to institute
or defend a suit on his behalf, although a certificate of
administration has not been granted to such relative.

No judgment or order passed in a suit, to which a minor subject to the
provisions of Act XL of 1858 is a party, will bind him on his attaining
majority unless he is represented in the suit by some person who has
either taken out a certificate, or has obtained the permission of the Court
to sue or defend on his behalf without a certificate. Permission granted
to sue or defend on behalf of a minor should be formally placed on the
record.—I. L. R., 5 Calc., 450.

If occasion arise, a suit may be filed in the name of a minor by his
mother as his next friend, without her having first obtained a certificate
under Act XL of 1858, and without her having previously obtained per-
mission from any Court.—I. L. R., 5 Calc., 219.

A co-sharer in ancestral family estate, under the Mitakshara law, the
co-proprietors being minors, though he may have power to manage the
estate, is not, in consequence, the guardian of such minors for the pur-
pose of binding them by the execution of a bond charging the estate;
nor is the eldest male member of the family, being of full age, guardian
of such minors for the purpose of defending suits brought against them
for money advanced in respect of the estate, unless he has obtained a cer-
tificate of administration under Act XL of 1858, s. 3. That Act shows
that he is not guardian of the minors, the care of whose persons and
property (unless taken under the protection of the Court of Wards by
s. 2) are subject to the jurisdiction of the Civil Courts.

A family having become separate in estate with apportionment of a
debt, once joint, among its several members, the sons of one of the latter
on their father's decease, are not liable for the whole debt for which he
at one time was responsible jointly with the rest of the family, but only
for his portion of the debt.—I. L. R., 8 Calc., 656.

4. Any relative or friend of a minor in respect of

Who may apply to whose property such certificate has
Court to appoint person not been granted, or, if the property
to take charge of consist in whole or in part of land or
minor's property. any interest in land, the Collector of

the district, may apply to the Civil Court to appoint a fit person to take charge of the property and person of such minor.

Under sections 4, 6, and 7, Act XL of 1858, the Court has power to appoint a guardian other than the father of a minor, for the purpose of instituting suits, and protecting the property of the minor.—4 B. L. R., 71, App.

5. If the property be situate in more than one district,
 any such application as aforesaid shall be made to the Civil Court of the district in which the minor has his residence.

Application where property in more than one district.

6. When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a minor or by any relative or friend of a minor, or by the Collector, the Court shall issue notice of the application and fix a day for hearing the same.

Procedure of Court on application.

On the day so fixed, or as soon after as may be convenient, the Court shall enquire summarily into the circumstances, and pass orders in the case.

Provided always that it shall be competent to the Civil Court to direct any Court subordinate to it to make such enquiry and report the result.

Reference to subordinate Court.

When the minor has almost attained his majority, a certificate should not be granted, unless under special circumstances, *e. g.*, very great weakness of mind in the minor or some other absolute necessity.—6 C. L. R., 210.

7. If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court shall grant a certificate of administration to such person.

Certificate of administration to whom to be granted.

If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative.

The Court may also, if it think fit (unless a guardian have been appointed by the father),
 Court may appoint guardian. appoint such person as aforesaid or such relative or any other relative or friend of the minor to be guardian of the person of the minor.

8. The Court may call upon the Collector or Magistrate
 Court may call for report as to relative or friend. for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of his property or person.

9. If no title to a certificate be established to the satisfaction of the Court by a person claiming under a will or deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it to be necessary for the interest of the minor, that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

10. If the estate of the minor consist of moveable property or of houses, gardens or the like,
 When Court may grant certificate to public curator or other person. the Court may grant a certificate to the public curator appointed under section 19, Act XIX of 1841 (*for the protection of moveable and immoveable property against wrongful possession in certain cases*), or, if there be no public curator, to any fit person whom the Court may appoint for the purpose.

11. Whenever the Court shall grant a certificate of administration to the estate of a minor
 Appointment of guardian. to the public curator or other person as aforesaid, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor.

The person to whom a certificate of administration has been granted, unless he be the public curator, may be appointed guardian.

If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the
 Guardian's allowance. Court may assign him such allowance

to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable.

The Court may also fix such allowance as it may think

proper for the maintenance of the
 Minor's allowance. minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the public curator or other person as aforesaid.

12. [*Repealed by s. 2 of Act IX (B. C.) of 1879.*]

13. In all enquiries held by the Civil Court under this
 Act, the Court may make such order
 Costs of enquiries. as to the payment of costs by the person on whose application the enquiry was made, or out of the estate of the minor or otherwise, as it may think proper.

14 & 15. [*Repealed by s. 2 of Act IX (B. C.) of 1879.*]

16. The public curator and every other administrator
 to whom a certificate shall have been
 Public curator, &c., granted under section 10 shall, within
 to furnish inventory, six months from the date of the certificate, deliver in Court an inventory of any immoveable property belonging to the minor, and of all such sums of money, goods, effects and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same.

And the public curator and every such other administrator shall furnish annually, within
 and annual accounts. three months from the close of the year of the era current in the district, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand.

If any relative or friend of a minor or any public officer,
 Proceeding if accuracy of inventory or account be impugned. by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the curator or administrator and enquire summarily into the matter and make such order thereon as it shall think proper, or the Court at its discretion may refer such petition to any subordinate Court.

17. All sums received by the public curator or such
 other administrator on account of any
 Payment of surplus into treasury. Investment. estate, in excess of what may be required for the current expenses of the

minor or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

18. Every person to whom a certificate shall have been granted under the provisions of this Act, may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts and liabilities due to or by the estate of the minor.

But no such person shall have power to sell or mortgage any immoveable property, or to grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

The mother and guardian of a Hindu minor, though not a guardian appointed under Act XL of 1858, when acting *bonâ fide* and under the pressure of necessity, may sell his mal estate to pay ancestral debts, and to provide for the maintenance of the minor.—I. L. R., 4 Calc., 76.

No greater powers can be exercised by a *de facto* guardian, who has not legally completed his right to manage a minor's estate, than can be exercised by a guardian duly appointed under Act XL of 1858, with reference to which Act his powers must be determined.—I. L. R., 4 Calc., 33.

The same was ruled in 10 B. L. R., 364; 15 B. L. R., 350; I. L. R., 2 Calc., 283.

The first of these cases was under s. 14 of the Lunacy Act, XXXV of 1858.

But a Full Bench has since ruled, that the rules laid down from s. 18 downwards apply only to certificated managers, and to guardians appointed under the Act. There is no indication whatever in this Act of any intention to alter or affect any provision of Hindu or Mahomedan law as to guardians who do not avail themselves of the Act. The scope of the enactment is merely to remove legislative prohibitions, to confer expressly a certain jurisdiction, and to define exactly the position of those who avail themselves of, or are brought under the Act, leaving persons to whom any existing rules of law apply, unaffected.—I. L. R., 4 Calc., 929.

Regulation V, 1799, s. 3, enacts that a "guardian or nearest-of-kin, who by special appointment or by the law and usage of the country may be authorized to act, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased."

A mortgage of the property of a minor made by the administrator appointed under this Act is invalid, unless the sanction of the Court has been previously obtained under s. 18 of the Act.—I. L. R., 2 Calc., 283.

On an application under s. 18 of this Act for leave to deal with the property of an infant, the Civil Court is bound to determine the question, whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant; and the petition should contain all the materials reasonably required to enable the Court to decide

that question. Decision in *Sikar Chand v. Dulputti Singh* (I. L. R., 5 Calc., 363) followed.—I. L. R., 6 Calc., 161.

A sale of a minor's immoveable property by a guardian appointed under this Act, and who was also the kurta of the joint family, of which the minor was a member, is invalid if made without the sanction required by s. 18 of the Act, even though the sale may have been for the benefit of the minor and made in good faith to pay off the debts of the ancestor. Where, however, it was found that the purchaser had acted *bonâ fide*, and had paid a fair price for the property, he was held entitled to a refund of so much of the purchase-money as had been expended for the benefit of the minor.—15 B. L. R., 350.

A minor cannot ratify a mortgage of his immoveable property made by his guardian without the sanction of the Civil Court, such a mortgage being, under s. 18, void *ab initio*.—I. L. R., 3 All., 852.

But it has been lately ruled, that where the transaction has been a proper one, and for the benefit of the minor, the latter is not entitled to have it set aside on the ground of want of sanction under s. 18.—10 C. L. R., 547.

Although a guardian of two minors may have power to manage or to make a partition of the estate, he has no authority to bind the estate of either of his wards by admissions of previous transactions.—10 C. L. R., 377.

19. It shall be lawful for any relative or friend of a minor, at any time during the continuance of the minority, to sue for an account from any manager appointed under this Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

20. If the disqualification of a person for whose benefit a suit shall have been instituted under this Act cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

21. The Civil Court for any sufficient cause may recall any certificate granted under this Act and may direct the Collector to take charge of the estate, or may grant a certificate to the public curator or any other person, as the case may be; and may compel the person whose certificate has been recalled to make over the property in his hands

to his successor, and to account to such successor for all monies received and disbursed by him.

Removal of guardian. The Court may also for any sufficient cause remove any guardian appointed by the Court.

So much of this section as provides that the Civil Court may direct the Collector to take charge of an estate was repealed by s. 2 of Act IX of 1879, B. C.

Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather.—3 B. L. R., 37, A. C.

22. The Civil Court may impose a fine not exceeding five hundred rupees on any person who may wilfully neglect or refuse to deliver his accounts or any property in his hands within the prescribed time, or a time fixed by the Court; and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court; and may also commit the recusant to close custody until he shall consent to deliver such accounts or property.

23. The Civil Court may permit any person to whom a certificate shall have been granted under this Act not being the public curator, and any guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor duly appointed for all monies received and disbursed by him and making over the property in his hands.

24. The public curator and every other administrator to whom a certificate shall have been granted under section 10 shall be entitled to receive such commission not exceeding five per centum on the sums received and disbursed by him, or such other allowance, to be paid out of the minor's estate, as the Civil Court shall think fit.

25. Every guardian appointed by the Civil Court or by the Collector under this Act, who shall have charge of any male minor, shall be bound to provide for his education in a suitable manner.

Guardians of minors to provide for education.

Remuneration of public curator, &c.

Penalty for neglect or refusal to deliver accounts or property.

The general superintendence and control of the education of all such minors shall be vested in the Civil Court or in the Collector, as the case may be ; and the provisions of Act XXVI of 1854 (for making better provision for the education of male minors subject to the superintendence of the Court of Wards) shall, so far as is consistent with the provisions herein contained, be applicable to the Civil Court or to the Collector, as the case may be, in respect to such minors and to every such guardian.*

26. For the purposes of this Act, every person shall be held to be a minor who has not attained the age of eighteen years.†

The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects.—3 B. L. R., 79, App.

The age of majority of a Hindu, resident and domiciled in Calcutta and not possessed of any property in the mofussil, is the end of 15 years.—10 B. L. R., 231.

This decision overrules previous decisions.—7 B. L. R., 607 ; 5 B. L. R., 508.

Every person, not being a European British subject, who has not attained the age of 18 years, is a minor for the purposes of Act XL of 1858, and, unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court, and he is a minor whether proceedings have been taken for the protection of his property or the appointment of a guardian or not.—1 B. L. R., 49 (F.B.)

27. Nothing in this Act shall authorize the appointment of a guardian of the person of a female whose husband is not a minor, or the appointment of a guardian of the person of any minor whose father is living and is not a minor ; and nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female.

If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor, the guardianship shall cease as soon as the father or husband ceases to be a minor.

* Repealed by Bengal Act No. IV of 1870, section 86, so far as it relates to any guardian appointed thereunder.

† *Jadunath Mitter v. Bolychand Dutt*, 7 B. L. R., 612, 613.

or husband (as the case may be) shall attain the age of majority.

28. All orders passed by the Civil Court or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals, in miscellaneous cases, from the orders of such Court and the subordinate Courts.

The order of a Judge, rejecting the application for the removal of a guardian, is appealable.—7 B. L. R., 6, App.

29. The expression 'Civil Court,' as used in this Act, shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction.*

Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

* *Jadunath Mitter v. Bolychand Dutt*, 7 B. L. R., 612, 613.

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